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THE LESSON
OF
POPULAR GOVERNMENT



THE LESSON
OF
POPULAR GOVERNMENT

BY
GAMALIEL BRADFORD

"Let none objecte this is men's corruption, and nothing to
ye course itselfe. I answer, seeing all men have this corrup-
tion in them, God in His wisdom saw another course fiter for
them." — BRADFORD'S *History of Plimoth Plantation*, p. 97.

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THE LESSON

OF

POPULAR GOVERNMENT

CHAPTER XXII

THE STATE GOVERNMENTS—MASSACHUSETTS

IN passing from the federal to the State governments there are three things to be noted at the outset: 1. The much greater importance of the State government to its inhabitants. 2. The general uniformity of the State governments throughout the Union. 3. The proportionally very small amount of public attention which is given to those governments.

As to the first point, Mr. Bryce says, writing before 1888:—

An American may, through a long life, never be reminded of the federal government except when he votes at presidential and congressional elections, lodges a complaint against the post-office, and opens his trunks for a custom-house officer on the pier at New York when he returns from a tour in Europe. His direct taxes are paid to officials acting under State laws. The State, or a local authority constituted by State statutes, registers his birth, appoints his guardian, pays for his schooling, gives him a share in the estate of his father deceased, licenses him when he enters a trade (if it be one needing a license), marries him, divorces him, entertains civil actions against him, declares him a bankrupt, hangs him for murder. The police that guard his house, the local boards which look after the poor, control highways, impose water-rates, manage schools,—all these derive their legal powers from his State alone. Looking at this immense compass of State functions, Jefferson would seem to have been

not far wrong when he said that the federal government was nothing more than the American Department of Foreign Affairs.¹

The State of Massachusetts spends twelve millions of dollars annually upon its public schools alone, perhaps more than the proportionate share of that State in the whole federal expenditure, at least as it was a few years since. The annual budget of the city of Boston amounts to forty-two millions, that of the state to more than twenty millions. It is probably within bounds to place the total expenditure, general, municipal, and local, in the State at nearly one hundred millions, say one-fifth part of the total federal expenditure up to the end of 1897. Evidently, from a financial point of view, State affairs are in no way second for its inhabitants to those of the nation.

Again, perhaps the most important question now before the people of the United States is the government of cities. In the State of Massachusetts alone there are thirty-three cities, containing nearly two-thirds of the whole population of the State; and if the proportion is not as large throughout the Union, it is still great and rapidly increasing. The great number of these cities, their fast-growing population, and the vast accumulation of wealth, render their government the most vital of all problems for the future welfare and even safety of the whole country. Now the organization and control of city government belong absolutely to that of the State. Hon. Seth Low, president of Columbia University and the former honored mayor of Brooklyn, said in an article in the *Century Magazine* of September, 1891:—

Nothing is better settled in every State in the Union than that the legislature of the State, unless it be limited by the State constitution, has absolute and arbitrary control over a city's charter. The State may grant a city charter or revoke it. The State may enlarge the

¹ "American Commonwealth," Vol. I., Chap. XXXVI., p. 412.

powers granted to the city or it may diminish them; it may assign duties under the city charter to officers elected by the people, or to officers named by the governor, or to officers designated by itself.

The Supreme Court of Massachusetts, in a decision relating to the subway in Boston, in 1896, said : —

The two principal grounds upon which the plaintiffs contend that the statute as a whole is invalid are that it imposes a heavy debt upon the city, and to a certain extent takes away from the city the control of its streets. The plaintiffs deny the power of the legislature to do either of these things without the authority of the council or the tax-paying citizens of the city. It has, however, been established by a vast weight of usage and authority that the legislature may impose such a duty and burden upon towns and cities without their own consent. (*Prince v. Crocker*, 166 Mass.)

So in another case relating to the Boston police commission: —

It is also suggested that the statute is unconstitutional because it takes from the city the power of self-government in matters of internal police. We find no provision of the constitution with which it conflicts, and we cannot declare an act of the legislature invalid because it abridges the exercise of the privilege of local self-government in a particular in regard to which such privilege is not guaranteed by any provision of the constitution. The powers and duties of all the towns and cities, except so far as they are specifically provided for in the constitution, are created and defined by the legislature, and we have no doubt that it has the right in its discretion to change the powers and duties created by itself and to vest such powers and duties in officers appointed by the governor, if in its judgment the public good requires this, instead of leaving such officers to be elected by the people or appointed by the municipal authorities.¹ (*Commonwealth v. Plaisted*, 148 Mass.)

Many other illustrations might be given, but these are sufficient to show why the affairs of their State have the first and largest claim upon the attention of its inhabitants.

2. The constitutions of the original States were the continuations and representatives of the old colonial

¹ Note how the word 'legislature' is used here as the equivalent of the State government.

charters, and these again of the trading company charters of still earlier times. The charters of Massachusetts and Virginia were substantially like that granted by Queen Elizabeth to the East India Company in 1599.¹

Of course after the Revolution the source of authority was changed from the English Crown to the people of the State, but the organization and structure of the government in its main elements remained the same. The constitutions of the original States were again copied by the thirty-two other new States with changes only of detail. And this is all the more true as the federal government does not prescribe any form of constitution, but accepts it as agreed upon by the people, who have no other guide than the existing State constitutions with such minor modifications as may occur to them.

All the States place their executive power, at least nominally, in the hands of a governor elected by the people, to whom in most a lieutenant-governor is added. In all the States there are two branches of the legislature also elected by the people and practically with universal manhood suffrage. In all there is a written constitution regularly adopted by the people and supposed to be superior to either legislature or executive. In nearly all the governor has a veto, more or less restricted, upon legislation. In all the judiciary has much the same organization, and in all but one or two is filled by popular election.

If it can be made to appear that the defective working of the governments is owing to one common cause, a step will be made towards pointing out a common remedy. If, indeed, this common cause lies in the failure of universal suffrage and of democracy there may be no remedy possible. But if the cause shall be found to be in defects of organization and of practical operation ; if it can be shown that the same cause has produced the repeated failures

¹ Bryce, "American Commonwealth," Vol. I., Chap. XXXVII.

of popular government in France and has paralyzed the numerous developments of it in this country, namely, the absorption of the whole power of government by the legislature and the weakness and want of responsibility in the executive, — then it is within the compass of imagination that an effective remedy may be found to restore us to the path leading to success.

3. The degree of public interest and consideration given to State affairs is in an inverse ratio to their relative importance. A natural presumption is that a people would be most absorbed in the circumstances immediately about them and most directly personal to themselves. A large part of the history of Europe consists of a struggle, often involving the use of force, to make the peoples give up their local prejudices and privileges for the sake of national requirements. Mr. Madison says in the *Federalist* (No. XLVI.): —

Many considerations seem to place it beyond doubt that the first and most natural attachment of the people will be to the governments of their respective States. . . . If, therefore, the people should in future become more partial to the federal than to the State governments, the change can only result from such manifest and irresistible proofs of a better administration as will overcome all their antecedent propensities.

Not only are the State governments of greater material interest but quite as much so from the point of view of political science. Mr. Bryce says: —

It was observed in the last chapter that the State constitutions furnish invaluable materials for history. Their interest is all the greater because the succession of constitutions and amendments to constitutions from 1776 till to-day enables the annals of legislation and political sentiment to be read in these documents more easily and succinctly than in any similar series of laws in any other country. They are a mine of instruction for the natural history of democratic communities. Their fulness and minuteness make them, so to speak, more pictorial than the Federal Constitution. They tell us more about the actual methods and conduct of the government than it does. If

we had similar materials concerning the history of as many Greek republics during the ages of Themistocles and Pericles, we could re-write the history of Greece. Some things, however, even these elaborately minute documents do not tell us. No one could gather from them what were the modes of doing business in the State legislature, and how great a part the system of committees plays there. No one could learn what manner of men constitute those bodies and determine their character. No one would know that the whole machinery is worked by a restlessly active party organization.¹

Note in the last sentences a dim consciousness of the reasons why the State governments have lost their hold on public attention, and compare the following :—

The State seems great or small according to the point of view from which one regards it. It is vast if one regards the sphere of its action and the completeness of its control in that sphere, which includes the maintenance of law and order, nearly the whole field of civil and criminal jurisprudence, the supervision of all local governments, and unlimited power of taxation. But if we ask, Who are the persons that manage this great machine of government? how much interest do the citizens take in it? how much reverence do they feel for it? the ample proportions we had admired begin to dwindle, for the persons turn out to be insignificant and the interest of the people to have steadily declined. The powers of State authorities are powers like those of a European parliament, but they are wielded by men, most of whom are less distinguished and less respected by their fellows than are those who fill the city councils of Manchester or Cologne. Several States exceed in area and population some ancient European monarchies. But their annals may not have been illumined by a single striking event or brilliant personality.²

And then follows the attempt to account for it.

One reflection suggested is that the political importance of the States is no longer what it was in the early days of the Republic. Although the States have grown enormously in wealth and population, they have declined relatively to the central government. The excellence of State laws and the merits of the State administration make less difference to the inhabitants than formerly, because the hand of the national government is more frequently felt. The questions which the States deal with, largely as they influence the welfare of the citizen, do not touch his imagination like those which Congress

¹ *Op. cit.*, Chap. XXXVIII.

² *Op. cit.*, Chap. XLIV.

handles, because the latter determine the relations of the Republic to the rest of the world, and affect all the area that lies between the two oceans. The State set out as an isolated and self-sufficing commonwealth. It is now merely a part of a far grander whole, which seems to be slowly absorbing its functions and stunting its growth, as the great tree stunts the shrubs over which its spreading boughs have begun to cast their shade.

I do not mean to say that the people have ceased to care for their States; far from it. They are proud of their States, even where there may be little to be proud of. That passionate love of competition which possesses English-speaking men makes them eager that their State should surpass, in the number of the clocks it makes, the hogs it kills, the pumpkins it rears, the neighboring States; that their particular star should shine at least as brightly as the other thirty-seven in the national flag. But if these commonwealths meant to their citizens what they did in the days of the Revolution, if they commanded an equal measure of their loyalty, and influenced as largely their individual welfare, the State legislatures would not be left to professionals or third-rate men. The truth is that the State has shrivelled up. It retains its old legal powers over the citizens, its old legal rights as against the central government. But it does not interest its citizens as it once did.¹

Why, it may be asked, should not this spirit of competition, this spirit of rivalry among the States, extend to the excellence of government and to political superiority? The simple answer is because it cannot, notwithstanding the strenuous efforts of clubs and associations formed for the purpose in constantly increasing numbers, the spirit being paralyzed and crushed out by defects of political organization.

And the natural result has followed.

The national parties have engulfed the state parties. The latter have disappeared absolutely as independent bodies, and survive merely as branches of the national parties, working each in its own State for the tenets and purposes which a national party professes and seeks to attain. So much is this the case that one may say that a State party has rarely any marked local color, that it is seldom, and then but slightly, the result of a compromise between State issues and national issues. . . . The national issues have thrown matters of State compe-

¹ *Op. cit.*, Chap. XLV.

tence entirely into the shade, and have done so almost from the foundation of the Republic. . . . A purely State party, indifferent to national issues, would, if it were started now, have no support from outside, would have few posts to bestow, because the State offices are neither numerous nor well paid, could have no pledge of permanence, such as the vast mechanism of the national parties provides, would offer little prospect of aiding its leaders to win wealth or fame in the wider theatre of Congress.¹

In seeking for the solution of this problem it may be best to take one State, Massachusetts, with which the writer is most familiar, and to make a comparison with others. For a century and a half preceding the War of Independence the colony had been in perpetual conflict more or less acute with the royal governors. In fact, that war was only a climax of the long struggle with an external, and in a sense hostile, power. That conflict was conducted by the legislative against the executive branch of the government. The same process—for that can hardly be called a conflict in which one side from the first submitted without resistance—has been carried on for the century since that war, although the source of executive authority was changed from the English Crown to the people of the State.

Even under English rule no impartial student can say that the legislature was always in the right. In military and financial operations, and especially in the management of currency, the weakness and confusion of a legislative body and the absence of a controlling and guiding authority are constantly apparent. For the first half of the century succeeding the adoption of the constitution the effects of legislative anarchy did not make themselves very greatly felt, because with a scanty population of almost pure Anglo-Saxon blood the laws executed themselves and hardly needed enforcement, while there was not much disposition to drive lawmaking to excess. It

¹ *Op. cit.*, Chap. XLVI.

was after 1850, and especially since the Civil War, that the struggle for life and the increase at once of wealth and of foreign population have developed the dangers which threaten us to-day.

The constitution itself is full of the spirit which had been generated by a century and a half of resistance to the royal governors. Its framers were familiar with the history of the usurpation and abuse of executive power. They had but little knowledge of the existence of the same tendency in a legislative body. Accordingly power is dealt out to the legislature with a lavish hand.

ARTICLE IV. And further, full power and authority are hereby given and granted to the said general court from time to time to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws for the naming and settling, all civil officers within the said commonwealth, the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said commonwealth, and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the governor of this commonwealth for the time being, with the advice and consent of the council, for the public service, in the necessary defence and support of the government of the said commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be enforced within the same. (Part the Second, Chap. I., Sec. I.)

And all this without the slightest effective reference or obligation to the executive power, or indeed to anybody responsible for the administration of the government. We shall see presently under what conditions the legislature exercises this power.

We turn first to the governor, and his introduction is sounding enough.

ARTICLE I. There shall be a supreme executive magistrate, who shall be styled **THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS**; and whose title shall be **HIS EXCELLENCY**. (Chap. II, Sec. I.)

What is the relation of this imposing title to actual practice?

ARTICLE IV. The governor shall have authority, from time to time, at his discretion, to assemble and call together the councillors of this commonwealth for the time being; and the governor with the said councillors, or five of them at least, shall, and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the commonwealth, agreeably to the constitution and the laws of the land.

What is this council without whose advice — the mildness of this indefinite expression is worth noting — the governor can hardly perform any action of any kind? It consists of eight persons beside the lieutenant-governor, said eight persons being chosen from eight equal districts of the State. It is to be observed that the constituency of these eight persons together is no larger than that of the governor alone; yet any five of these can override and defeat him in any of the numerous actions which he can only do with the advice and consent of the council. It seems like a sarcasm, and is thoroughly significant of the feeling towards the royal governors, that the popularly elected governor, though presiding over the council, has no vote in it. Note further that the council has absolutely nothing to do with legislation, being excluded

even from a share in the veto, nor anything to do with, or any responsibility for (apart from the very indirect one of confirming the governor's appointments), administration. In fact, there is no pretence of any other function of the council than that of tying the governor's hands, much as a horse in a pasture is sometimes hobbled to prevent his running away. A place in the council is therefore an elegant sinecure, with the pleasing exhilaration of holding a bridle upon the governor, and is almost always determined by considerations of party; so that a governor in accord with the party majority may have comparatively an easy and comfortable position, while one not so in accord will find it very much the reverse. The late Governor Russell was driven by such experience to say that there were ten governors instead of one.

One function the governor can apparently fulfil without the aid of the council.

ARTICLE VII. The governor of this commonwealth, for the time being, shall be the commander-in-chief of the army and navy, and of all the military forces of the State, by sea and land; and shall have full power, by himself, or by any commander, or officers, from time to time, to train, instruct, exercise, and govern the militia and navy; and, for the special defence and safety of the commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them to encounter, repel, resist, expel, and pursue, by force of arms, as well by sea as by land, within or without the limits of this commonwealth, and also to kill, slay, and destroy, if necessary, and conquer, by all fitting ways, enterprises, and means whatsoever, all and every such person and persons as shall, etc.,

the same sonorous rhetoric continuing for nearly a page. The key to it is, however, found in Article X.:—

The captains and subalterns of the militia shall be elected by the written votes of the train band and alarm list of their respective companies; the field officers of regiments shall be elected by the written votes of the captains and subalterns of their respective regiments; the brigadiers shall be elected, in like manner, by the field officers of

their respective brigades; and such officers, so elected, shall be commissioned by the governor, who shall determine their rank.

The apex of the system was differently provided for.

The major-generals (an office at present in abeyance) shall be appointed by the senate and house of representatives, each having a negative upon the other, and be commissioned by the governor.

What sort of a military command is that in which all the officers are elected by subordinates separately from and wholly independent of the commander-in-chief, and under no necessity of obedience in the spirit at least if not in the letter, even his power of removal being subject to the act of the legislature?

Apparently the confirmation of the governor's appointments by the council did not furnish sufficient security against executive usurpation, since, either by the original constitution or subsequent amendments, all the chief executive officers of the State — the secretary, treasurer and receiver-general, auditor, attorney-general, sheriffs, registrars of probate, clerks of court — are elected by the people, either as a whole or in fractions, separately from and independent of the governor and of each other, so that there is no common superior or link between them. As a former governor publicly said, if he were to go to the State treasurer and suggest any policy, the latter would be quite justified in telling him it was none of his business.

It appears, therefore, that with the exception of his military staff and his private secretary there is no State officer to whom the supreme executive magistrate can give an order with any adequate means of enforcing it, being thus as powerless for executive as for legislative work. When we consider that four hundred thousand voters are asked to turn out every year to elect a complete figurehead like this, is it any wonder if they become apathetic and contemptuous, and that the vote at a

State election is always much smaller than at a national? As in the case of the religious ceremonies of the ancient augurs at Rome, that government and people are in a perilous condition whose most solemn political exercises are in reality nothing more than a meaningless sham.

Of the character and effect of the veto upon legislation, in the hands of the chief executive, enough has already been said, and it is equally applicable to the President of the United States, the governors of the States, and the mayors of cities.

Is it not evident that men of first-class ability will not seek or even accept such a position; that the candidates must either be unable to comprehend its real meaning or must seek it for other reasons than rendering effective service to the State?

While, however, the governor of a State even more than the President of the United States has very little power for good he has infinite possibilities for evil. By intrigues with the legislature, by playing upon the spirit of party, by appointments on the commissions to be presently noticed, he can seriously injure both the material and the moral condition of the State, though the existence of the council is a check to positive evil-doing which does not exist in the case of the President of the United States. We have here also an explanation of the fact referred to in Chapter XVIII., that it is not regarded as proper for any man openly to seek the governorship, because, like any other public office, it is not a place of something to do but of something to get. It is a direct and immense credit to the people of the State and a triumphant defence of universal suffrage, at least as regards them, that, to go no farther back than the war, our governors with hardly an exception have been honorable and high-minded men, doing the best they could for the service of the State with the means at their command. Even though the nominat-

ing conventions have fallen under the control of party managers and politicians, yet the two sets of these know well that if in their competition they are to hope for success with the people of the State, they must put forward only men of honor and integrity. It is one of many proofs that so far from the defects of our politics being chargeable to the people, it is the people who save us from much worse evils than we now have to bear.

Again, an executive system in which the head has no authority over the members ; in which the chiefs of the different subdivisions are elected separately and are all independent of each other and of their common head, is fatal to any effective administration. It is the negation of government and is certain to bring it to a deadlock. As has been said, during the half-century succeeding the formation of the constitution very little government was needed ; a comparatively few general laws only were sufficient, the people obeyed them and the local system of town government did the rest. But towards the middle of this century it became apparent that a much more efficient system was necessary. An account of the steps taken by the legislature to provide this must be preceded by an analysis of the legislature itself, but mention may be here made of a clause in the constitution which forms a curious comment on the subsequent history.

Article XXX., and the last of the Declaration of Rights, runs thus : —

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial power, or either of them : the executive shall never exercise the legislative and judicial power, or either of them : the judicial shall never exercise the legislative and executive power, or either of them.

It is curious that there is nowhere any definition of the limits thus peremptorily ordered to be observed. The functions of each branch are laid down in a general way

which is far from containing any exact division of them. It may be, and often is, said that this was not possible. But then what was the use of putting in the injunction? It was certain that there would be a conflict of powers, and certain, also, that the strongest of them would prevail, and these words merely recognize that certainty with a mild deprecation of the conflict itself thoroughly characteristic of the view which was taken of the new government coming into existence.

But the climax of the article is in the concluding clause, "to the end it may be a government of laws and not of men."

Since the world began has anybody ever heard of or can anybody imagine a government of laws alone without the intervention of men? Of course it is plain enough that what was meant is that it should be a government under a system of law and not by the arbitrary caprice of individuals, but the words themselves have been constantly used to justify the exclusive government of the legislature, because an impersonal body makes laws and puts them in operation, while to intrust any real power to the executive would be to introduce the forbidden government of men. The same idea is expressed in the words, "measures, not men," which is so often dwelt upon as the fundamental principle of our institutions, and of which the fatal effect is becoming more and more apparent.

In analyzing the legislature we find almost an exact repetition of what we have seen in Congress and which exists also in all the other States. There are two bodies, one of 240 and the other of 40 members, all precisely equal. The senate of Massachusetts differs from that of the United States in that whereas the members of the latter are elected by the State legislatures, and so on a different basis from the representatives, the senate of Massachusetts is elected by the whole people, only that

for this purpose they are divided into 40 fractions, while in electing representatives they are divided into 240.

In neither of these bodies is there any person who has any authority over any other; in neither is there any person representing the whole State or authorized to speak for it, nor any person representing the administration of government or in any way responsible for it. No business whatever is prepared in advance, and any member of 240 in one house or of 40 in the other can, if he pleases, propose as many measures upon any imaginable subject relating to human society. And there are really no checks upon anything the majority may see fit to pass except the limitations of the constitution and the veto of the governor. That is the reason of the curious feature which Mr. Bryce points out, — the attempt of many State constitutions to limit legislation in all possible ways, even through minute details.¹

Log-rolling and lobbying are just as rampant as in Washington and even more so, on account of the greater variety and importance of the subjects which, as has been pointed out, come under the jurisdiction of the State. A majority can only be obtained by an accumulation of units,

¹ An examination of these details is of interest. According to the pamphlet of Mr. Davis, already referred to, out of thirty-eight State constitutions in 1885, twenty-five allowed the legislature to come together only in every other year; eighteen limited the length of the session to periods varying from forty to ninety days; in eleven, the legislature in special sessions could take up only the subjects named in the call; twenty-five required that all bills should be read on three separate days; in twenty-seven, bills must contain only one subject, expressed in the title; six prohibited general or salary bills from containing anything else; twenty-three prohibited amendments of any act by title, the full text must be quoted; nineteen required that all bills must be passed by a majority of the members elected, voting by ayes and noes; thirty embodied in their constitutions provisions forbidding special legislation, twenty totally, and ten partially. But, as a critic observes, such attempts must fail to effect any permanent or adequate reform, much for the same reason that it is useless to try to repair a leaking dam by plastering it from the outside.

and every artifice of persuasion and inducement must be brought to bear; and that just as much for measures of pure public interest as for schemes involving private pecuniary gain.

When the legislature comes together the first business is to elect a presiding officer, a Speaker in the house and a president in the senate, which in so far differs from that of the United States, whose presiding officer, the Vice-President, is imposed upon it from the outside. The next process is the formation of the standing committees, in the house, just as at Washington, through the absolute discretion of the Speaker, but in the senate, unlike that at Washington, by appointment of the president instead of being elected by the members. The houses being thus organized work begins to pour in. Not only is any member at liberty to propose any measure on any subject he pleases, but any citizen can request the same thing of his member, and the member, unless the proposition is clearly objectionable, feels rather bound to do it.

There is, therefore, no interest and no principle of society which is safe from year to year against attacks of the most revolutionary kind, and all classes are kept in constant fear and uncertainty. Laws are constantly passed and still more constantly demanded in the supposed interest of labor which alarm and discourage capital; and on behalf of combinations of capital which exasperate the mass of the people and excite them to resistance. To this assembly comes an inaugural address or an annual message from the governor, externally rather a solemn ceremony, but which in fact is a cross between an essay, such as is written for magazines, and a kind of paternal advice, which, unless it involves some party advantage, carries about as much weight with the legislature as that of any ordinary citizen.

The facts with regard to the Speaker are the same that

we have seen in Congress, and are substantially true also of the president of the senate. He is elected by a vote of the clear party majority. Once elected he has the absolute power of making up the separate house committees, and concurrently with the president of the senate of making up the joint committees. In 1895 there were six of these committees made up on the part of the senate by the president, ten on the part of the house made up by the Speaker, and twenty-eight made up jointly by the president and the Speaker from their respective houses, the number being thus forty-four in all. The places on these committees are objects of great desire, though it is difficult to see why for any legitimate purpose, as they involve a great deal of hard work and no possibility of more than the slightest increase of public reputation. Still, the committees do to a great extent control legislation. They can almost wholly prevent any which they object to, and can do more than any other power in the State to promote any which they favor.

At the risk of repetition it is necessary to point out how potent in the State, as in Congress, are the forces which make for corruption. The Speaker is chosen by a party majority. The inducements to seek the position are: 1. A certain degree of power and authority. 2. An increase of reputation. 3. The pay, which, being \$600 for members, is twice as much for the Speaker, or \$1200, a sum which can hardly be expected to attract very great ability for four or five months of hard work. As to the first two points it is to be noted that the Speaker has, except as the instrument of a party majority, no direct control over or voice in legislation, hardly more than that of any other of the 240 members. His power consists almost exclusively in supporting his party friends and paying the debts incurred in his election. As he has further no responsibility whatever for the administrative

effects of legislation, and as his partisan position is fatal to his success as an impartial presiding officer, there is no way in which he can gain any special reputation in the eyes of the public. It is merely a temporary elevation above his fellows of the house.

As to the committees the case is even stronger. The majority of the members do and must hold their places from party considerations, and of the national parties at that, and these must thrust aside considerations of the general welfare of the people of the State. And there are other strong reasons for this. One-half, if not more, of every legislature consists of new men, and there are very few who have been there for more than two years. Not merely have they been appointed by the Speaker for party reasons, but they have obtained their nominations and their seats in the house largely on the same grounds. It is impossible that they should have the knowledge and experience which are implied in the word 'statesmanship.' Then every member of the committee, as of the houses, represents one two hundred and fortieth or one fortieth part of the State. He has no authority and no responsibility for the whole State, and any attempt to assume such will only bring upon him hostility if not ridicule. He has no authority or responsibility for the government of the State. Whether the laws which he assists in passing work well or ill in practice is of very little consequence to him, and long before that question can ever be answered he will in all probability have disappeared from public life.

To committees thus constituted comes a flood of propositions of every conceivable kind, from abstract dogmas to carefully prepared bills. All stand upon the same footing, whether measures formally recommended by the executive, those prepared by serious and responsible associations of citizens, socialistic theories of dreamers and enthusiasts, or deeply laid plots for private advantage at the public ex-

pense. It is absolutely at the discretion of the committees which of these shall be taken into consideration and how they shall be treated. As no business has been prepared before the legislature meets it is seldom less than two months later that any business can be got ready for the consideration of the whole body. There is a rule of both houses that no business can be introduced after the second Wednesday in February, but the rule can be suspended, in the house at least, by consent of four-fifths of the members present, which is not often refused. During those two months the house as a whole has little or nothing to do, though the brains of the members are devoted to finding additional work for the committees.

How do the committees decide what measures to take up and how to treat them? That is the work of persuasion; in other words, of lobbying and log-rolling. There is no other possible way of getting legislation attended to. It is work in which schemes of private interest have immensely the advantage, but there is no other method by which legislation can be either obtained or prevented.

There is a strong feeling through the State against lobby work by corporations, which pay agents at the State House to promote their wants or to keep watch of and to prevent adverse legislation. But it is not understood that they have no choice in the matter. In the year 1890 there was a conflict at the State House about a charter for an elevated railroad. The legislation favored by the West End Street Railway Company was progressing smoothly, when a member of the house brought forward charges: that the company has maintained a large corps of lobbyists and legislative counsel, and has made expenditures through them and its officers beyond any legitimate purpose in securing legislation; that the officers and agents of said company have given numerous banquets and dinners to members of the legislature, and that while some of the

members were under the influence of wine and liquors then furnished, the merits of the plans of said company have been presented to them; that carriages have been furnished and paid for by the agents of said company to convey members to and from such dinners, and that hotel lodgings of members have also been so paid for; that counsel for the West End Railroad Company requested of the Speaker of the house that he appoint certain persons on the Street Railway Committee, which persons were not appointed.

An investigating committee of seven members of the house was appointed, which took testimony covering nearly six hundred pages of the House Documents. It was shown that about October 1, 1889 (the legislature coming together on the first of January following), the company retained as counsel an ex-governor who had also been a member of Congress, and was a most influential member of the Republican party, to which the Speaker was certain to belong. This counsel took occasion on behalf of the company to assure the leading candidate for the speakership that the company would offer no opposition to his election. It was shown, and admitted in the report of the committee, that after the Speaker was elected this same counsel undertook to interview and urge upon him the kind of committee which should be appointed, though it was denied that specific names were mentioned. In the course of the examination the regular counsel of the company was asked : —

Q. Is it not in your judgment an evil that men of political influence, not professional lobbyists, should be employed and paid substantially for the purpose of influencing legislation, without the fact of their employment being known to legislators?

A. Well, I think the thing is an evil of itself; and if you can show any other practical way of doing it I should like to have it shown.

In his closing argument, Mr. Stearns, the manager for the West End Company, said : —

How shall this be remedied? It is not for me to discuss that. But some remedy there ought to be and there must be. Whether you can ever go into committee of the whole; whether you can ever appoint any investigator of great and general interest; whether you shall have it so that counsel may present their claim in some way or other to a large body, and an influential body, and a talking body — I leave you to devise.

In their report the committee said : —

It is a fact beyond denial that a body of professional lobbyists has for years formed a part of the machinery of legislation, and that, with the increasing importance of the financial interests dependent upon legislative action, this body has been growing in numbers and in influence. This condition of things is by no means peculiar to this commonwealth, but is admitted to exist not only in connection with the legislative bodies of all the other States and of large municipalities, but conspicuously in connection with Congress. The president of the West End Railway Company was asked the following question : —

Q. Do you state then that your corporation, as an applicant for legislation here at the State House, finds a condition of things that a regular body of men, known commonly as the lobby, stands between the legislature and applicants for legislation, and that, in order to avoid having opposition in the legislature, it is necessary to retain them ?

A. That was my view of the case entirely.

Q. You thought that the existing conditions at the State House required the employment of these men in order to give your company the fair chance which you considered it entitled to ?

A. I did.

It seems to be admitted that a corporation applying for legislation in which large financial interests are involved is confronted with the fact that a body of men, following the occupation as a regular pursuit and many of them deriving a large revenue from it, stands in a position where it may either be of some assistance or may do considerable mischief. According to the testimony of its own officers, the West End Company would have been glad to dispense with the services of these men if it had thought it safe.

The committee also feels it proper to call attention to the fact elicited by this investigation, that a very large proportion of those who are active lobbyists during the session of the legislature are active politicians during the rest of the year. It is also obvious, and it appeared from the testimony, that a large part of the stock in trade of the lobbyist consists of the acquaintances which he has made and the friendships which he has formed as a politician.

The committee also feels called upon to express the opinion that it is unfortunate that any members of the legislature should, upon the expiration of their terms of service, pass into the employment of applicants for legislation — not because of their ability either as legal advisers or as business men, but because of their acquaintance with those with whom they have formerly served as legislators, and on account of their knowledge of political methods and their influence in political circles. The character of the legislature is affected and public confidence in its unprejudiced action is weakened when service among its members is used as a stepping-stone to employment in the capacity of lobbyist.

In pursuance of this report a somewhat severe Act to regulate and restrict the lobby was passed and has since been followed by others ; but considering the admitted necessity of the institution, it is doubtful whether anything very effectual has been accomplished. In fact, one of the main features of the evil consists in this, — that nothing is really known of the nature and operations of the lobby and how far it succeeds in its work of corruption. In 1895 there appeared a kind of novel with the unsavory title of "The Leg Pullers," by a man of whom it is said by the best authority that he knows the legislature as well as any man living. There is nothing in the work at all inconsistent with the reports of the committee of investigation referred to above. Yet if a fraction of what is there indicated is true, and unless it can be remedied, we may well despair of the future of the State. The mere existence of such a work in the hands of new members is enough to stimulate a force which, if we add the considerations already suggested with regard to the quality of men who gravitate towards public life, is operating to lower and degrade the character of that public life from the governor onward throughout the legislature. And if in spite of this our governors have been, as already stated, men of the highest character ; if the great majority of the legislature still consists, as the evidence seems to show, of honorable and upright men, the credit for that belongs

to the people of Massachusetts, to universal suffrage as expressed through the people of the State, who, in spite of all the manœuvring of party politicians and all other obstacles, insist upon and succeed in obtaining candidates of that quality. Do the pages of history furnish more triumphant testimony on behalf of any instrument of government?

If so much can be said as to men what are the facts as to legislation? On all sides the cry goes up that we have too much of it. The acts and resolves of 1896 fill 648 pages,¹ in which are included 550 acts and 124 resolves; and to these are added 134 more pages of mere references to statutes previously existing which are more or less affected by the work of the current year. How can it be otherwise, when 280 men have an equal power, not only for themselves but for all their constituents, to submit as many propositions as they please upon any given subject, and when forty-four committees are hard at work without check or control to grind them into law?²

Another bitter complaint is that there is so much special and so little in proportion of general legislation. How, again, can it be otherwise, when every one of these men represents a separate fraction of the State, and therefore local and private interests, while there is no one to represent the general interest, or to defend it against local and private attacks? A large part of the legislation is based upon no principle, is impracticable in operation,

¹ Those of 1897 contain 927, and those of 1898 1112 pages.

² Il est encore à souhaiter qu'on en finisse une bonne fois avec cet abus de l'initiative parlementaire qui fait qu'à chaque législature plusieurs centaines de projets de loi, discutés dans les commissions, rapportés, imprimés, sont enfouis à jamais dans les cartons du palais Bourbon. — PAUL LAFITTE, *Revue Bleue*, November 11, 1893. This extract is given in the original to show how exactly a criticism of the French legislature applies to those of our States and of the Union, and how sharply they all stand out in contrast with the procedure of the British Parliament.

and wholly inconsistent with existing law and practice, while many mandatory statutes are without any effective penalty. Is this not a direct result of the fact that nobody who has anything to do with the making of laws is in the slightest degree responsible for their effect in operation, or for their consistency and coherence with the scheme of government already existing?

The length of sessions, amounting never to less than five months in the year, is another grievance. But a sufficient explanation, at least, is found in the fact that every legislature begins a wholly new work with every year, a Speaker to be elected, a wholly new set of committees to be formed, the enormous mass of propositions to be distributed among them, — a mass which continues to be augmented by tolerated additions till late in the session, — the hearings and incubation of majorities to be gone through with; so that it is only in the last two months, and even in the last one, that the work of the whole house really begins. And then the rush and confusion are so great that it is impossible to foresee what legislation, and in what shape, will issue from this undistinguishable encounter. At every step of such procedure the wonder repeats itself, not that things are so bad, but that they are not a great deal worse.

After the questions of men and of legislation that of administration presents itself, and it is in this particular that the State governments differ most from the federal. The federal administration is at least based upon a sound principle. Every office is filled by one man, appointed by the President through the heads of departments, and it may be safely said that that administration is far better than that of any State. No doubt the scandal of appointments made in subjection to members of the legislature gave the impulse to civil service reform, but even so it was better than a system which produces a paralysis of

administration almost as complete as would follow in the human body by severing the connection of the nerves with and close to the brain centre. There is a theory that filling administrative offices by separate election increases the control of the people over the government. In fact, it does just the reverse by diffusing and covering up responsibility, so that the people lose all interest in the elections and obediently follow the nominations of conventions manipulated by wire-pullers, an evil not less than the old system of federal political appointments. The disastrous effect in cities became so apparent that election, whether by the people or by city councils, has been almost wholly abandoned in favor of appointment by the executive, though under restrictions to be hereafter noted which in practice nearly neutralize the advantage gained. It is in the State governments, which, though the most important of all, have received the least attention, that this anomaly has been suffered to continue.

That an administration thus based upon separate election must speedily come to a deadlock is demonstrated in the history of Massachusetts. For the first half-century, indeed, after the formation of the constitution the people needed very little government of any kind beyond the town meeting, but as the strain began to make itself felt it was evident that something must be done. The legislature, therefore, proceeded to set up a new system of executive government, unknown to the constitution, in fact in defiance of it. It is worthy of note that nowhere in the constitution, with one single exception, or in any amendment to it made prior to the year 1856, is there any allusion to boards or commissions for executive work. Article XII. of Chapter II. says that all public boards "shall at stated periods deliver to the governor an account," etc. But the context shows that the boards thus referred to in a single instance were contemplated as

existing in connection with military affairs. Certainly it does not justify the action of the legislature in handing over the State to a government by commissions which is advancing with rapid strides towards the extinction of local self-government.

The first step was taken in 1837 with the Board of Education, established in consequence of the exertions of Hon. Horace Mann. As this is still one of the most important of the commissions, it is worth while to examine it in detail. It consists of ten persons, — the governor, lieutenant-governor, and eight other persons, one appointed annually by the governor and council. The governor, be it observed, has only one vote in ten in a body of whom no governor has yet been in office long enough to appoint a majority. He has, therefore, no authority whatever over their action. The members are unpaid, and cannot be expected to give very arduous service, particularly as no possible increase of reputation is to be won in such an impersonal body. In fact, most of the work is performed by the secretary, whose power may be partly inferred from the fact that in sixty years only six persons have held the office. The annual report of the board is almost wholly written by him or under his direction, in which he says whatever he or his subordinates may please; and it is safe to say that never once in the sixty years has that report been made a subject of serious discussion in the legislature, which is readily explained by the fact that there is nobody in the legislature who has any interest or authority to speak for the board or any responsibility for it. If the board wants any money or any modifications of the system, it has to resort to the process of lobbying already described; and some of the best work of the best men in the cause of education has been done by methods which are the most loudly denounced. The result of

the system is that it is impossible for any one to say with any certainty whether the State receives full consideration for the twelve millions which the schools annually cost; or whether the schools are up to the standard which at the end of the nineteenth century we are entitled to expect; or for the people to form any judgment as to the quality of the men or women who have this important interest in charge.

Fifteen years passed before the establishment of the second of the commissions, known as the State Board of Agriculture. The members consist of the governor, lieutenant-governor, and four other officials, three citizens appointed by the governor and council, and thirty-six others appointed by different societies throughout the State. There is of course a secretary, who writes an annual report, but it is never taken into consideration by the legislature; and the people probably know even less of the functions of the board than of that devoted to education. After this second creation the pace becomes more rapid. The following is a list of the commissions existing and the dates of their creation:—

- 1837. State Board of Education.
- 1852. State Board of Agriculture.
- 1860. Cattle Commission.
- 1863. State Board of Charities.
- 1866. Savings Bank Commission.
- 1866. Commission on Inland Fisheries.
- 1866. Insurance Commission.
- 1869. Bureau of Statistics of Labor.
- 1869. Railroad Commission.
- 1870. Commissioner of Corporations.
- 1877. Land Commission.
- 1877. Harbor Commission.
- 1879. State Aid Commission.
- 1879. Prison Commission.
- 1884. Civil Service Commission.
- 1885. Board of Registration in Pharmacy.
- 1885. Gas Commission.

- 1885. Boston Board of Police.
- 1886. State Board of Arbitration and Conciliation.
- 1887. Board of Registration in Dentistry.
- 1887. Comptroller of County Accounts.
- 1889. Commissioner of Foreign Mortgage Corporations.
- 1889. Metropolitan Sewerage Commission.
- 1890. Tax Commission.
- 1890. Commission on Free Public Libraries.
- 1890. Ballot Law Commission.
- 1891. Nautical Training School Commission.
- 1891. Commission on Uniform Legislation.
- 1892. Commissioner of Public Records.
- 1893. State Highway Commission.
- 1893. Metropolitan Park Commission.
- 1894. Boston Rapid Transit Commission.
- 1894. Fall River Board of Police.
- 1895. Metropolitan Water Commission.¹

Here are thirty-four permanent commissions, only nine of which existed before 1870, and eleven of which were created in 1890 and the following years. Besides these, there have been over a score of minor and temporary commissions. Almost a half of the 118 years since the adoption of the constitution passed before the first State board was created. Some of these commissions are merely for purposes of inquiry, but others are endowed with large executive power, and it will be seen what a rapid advance is being made in this direction.

One or two samples may be taken from the above list. In 1885 the whole police government of the city of Boston was taken away from its inhabitants and handed over to a commission of three men appointed by the governor

¹ This list has been taken from an article by Raymond L. Bridgman, in the *New England Magazine* for June, 1894. Mr. Bridgman, a man of the highest character, has filled the position of newspaper correspondent at the State House for twenty years, and has become entirely imbued with the spirit of the legislature. The article in question is extremely interesting as a perfectly honest and sincere defence of the supremacy of the legislature, the practical suppression of the executive, and the development of government by commissions.

and council of the State in separate years and to hold office for five years, so that no governor is even nominally responsible for even a majority of the board. For the police administration of the city these men are responsible to no human being; not to the governor, for he can remove none of them without the consent of the council, and recent experiments have shown that, unless in a case of glaring crime, the power is wholly nugatory;¹ not to the legislature, which never comes in contact with them at all; not to the authorities or the people of Boston, who by the statute are excluded from all control, although the annual salary of \$12,500 is paid from the city treasury.

A brief extract will illustrate this:—

The said city of Boston shall provide all such suitable accommodations for the police of said city as said board shall require, and all buildings and property used by said police shall be under the control of said board. All expenses for the maintenance of buildings, the pay of the police, and all incidental expenses incurred in the administration of the said police, shall be paid by the city of Boston upon the requisition of said board.²

It may be doubted whether the colonies of 180 years ago had graver cause of complaint against Great Britain than the people of Boston have to-day against the government of their State. If we add that the whole power of granting licenses for the sale of liquor is placed in the hands of these three men, and that the fees derived therefrom are devoted to paying the expenses of the police, the situation becomes still more manifest. In 1894 a similar police government was imposed upon the

¹ See the case of William M. Osborne, impeached before the council in 1891; also of General A. P. Martin, in 1897.

² The expenses of the Police Department were:—

	Year ending April 30, 1896.	Year ending Jan. 31, 1898.
Salaries	\$882,124.78	\$1,409,169.03
Total	953,155.99	1,667,887.26

city of Fall River, and was only averted from those of Holyoke and Woburn by the veto of the governor.

It may be admitted once for all that the evil consequences of such a policy have not been fully developed, on account of the high character of the men who have been placed on the commissions, — a bad system, it has been said, being corrected through administration by good men; but none the less it is destructive of local self-government and of the feeling of responsibility in the inhabitants for their own affairs, and accustoms them to submit with indifference to whatever government is imposed upon them from the outside.

The same tendency appears in the next example. In 1898 was established the State Highway Commission, consisting of three members appointed by the governor and council, one each year for a three years' term, with salaries amounting to \$6000 in all, and with travelling expenses at discretion. According to the statute, the commissioners of any county, or two or more towns, may make application to the highway commissioners, who may grant leave to the county commissioners to lay out the road at the expense of the county. The highway commissioners shall then report to the secretary of the commonwealth, who shall lay the case before the legislature. If the legislature makes an appropriation, the Highway Commission shall build the road, thenceforward to be maintained by the State. But the caution of these initiatory steps rapidly disappears. Any county commissioners, or the mayor and aldermen of a city, or the selectmen of a town, may apply to the Highway Commission, who, if they please, may build the road asked for, to be paid for and afterwards maintained by the State, with the single limitation that not more than ten miles of road shall be built in any one county in any one year without the approval of the governor

and council. A highway loan was provided for and \$300,000 to be borrowed on the credit of the State, and the money was to be handed over for the cost of roads and for salaries and expenses, to the absolute discretion of these three perfectly irresponsible men, with the single requirement that contracts made by the commission shall be approved by the governor and council. Apparently the result was satisfactory to somebody, as in 1896 the amount was increased to \$600,000.

How long will it be before the whole system of roads through the State will be maintained by a centralized government in the hands of these three men? Observe that roads may be built regardless of the wishes of the inhabitants, upon the mere demand of certain officials, and that private property may be taken or sacrificed and disfigured, while the owners, if dissatisfied with damages allowed them by the commission, are left to the remedy of a lawsuit. It is significant that the most active promoter of the system was perhaps the largest manufacturer of bicycles in the State.

In 1893 was established the Metropolitan Park Commission, consisting of five persons, one appointed each year by the governor and council, without salary but with travelling and other necessary expenses. The Act says that they may take land and rights to land for public open spaces by purchase, gift, devise, or eminent domain. In the latter case aggrieved parties, unless they are satisfied with the award of the commissioners, are again left to the remedy of a lawsuit. One million of dollars was appropriated, to be spent at the pleasure of these commissioners, as in the other cases wholly irresponsible. To this amount was added in 1894 \$500,000 for the kindred work of "roadways and boulevards." Once in five years the Supreme Judicial Court, sitting in equity, is to appoint another commission of three persons who are to

determine the proportion of the amounts expended by the Park Commission which shall be paid by the cities and towns affected by the action of the commission, it being provided that Boston shall for the first five years pay fifty per cent. of the same. In all this no reference is made to the consent of the inhabitants of the cities and towns.¹

Candor compels the admission, that from the work of this commission Boston with its vicinity promises to have a series of public parks and grounds as magnificent as any in the world, of untold value and at a comparatively insignificant cost ; and of so much the more value that the large open private estates, which a generation or two since adorned the neighborhood of the city, are in a division among heirs being constantly cut up and built upon. Even such advantages, however, may be purchased at too high a cost other than pecuniary. Similar achievements by other despotisms have been the prelude to the fall of nations. And of all despotisms it may be said that the worst are those which take an impersonal form ; if, indeed, there is not a lower depth in the multiplication of impersonal despotisms. Moreover, it will be argued later that just as good work might be done by the constitutional executive if properly organized with suitable power and responsibility.

It is curious to note with what impetuosity, if not recklessness, the legislature dashes on in its new career. In 1893-94 was established the Rapid Transit Commission for building a subway in Boston. The Act creating it was ostensibly one for granting a charter to a company for building an elevated railroad, and the creation of this commission was so far blended with it, that the sections of the Act

¹ It thus appears that work strictly executive in character has been taken from that branch by the legislature, and handed over to the judiciary, a striking commentary upon the mandatory clause of the constitution.

were numbered continuously without any line of division between the parts. The commission consists of five persons, two appointed by the governor and council and three by the mayor and aldermen of Boston. They hold office for five years and their annual salaries are \$5000 apiece or \$25,000 in all. They are instructed to build a subway within certain limits of territory, which form almost the only limits of any kind. According to the Act,

Said commission may, from time to time, choose a secretary and such engineers, clerks, agents, officers, assistants, and other employees, not of their own number, as it may deem necessary, may determine the duties and compensation of such employees, and may remove the same at pleasure;

a sufficiently wide discretion, considering that they are accountable to no human authority. The power over persons was matched by that over things.

Said commission shall not begin the work of constructing any of said subways until it has filed in the office of the surveyor of said city a plan signed by said commission, showing the route or location of the part of a subway which it proposes to construct.

Any such plans so filed may be altered at any time by a new plan signed and filed in like manner.

This commission illustrates another peculiarity of the system, the suppression of personality. To the lay mind the subway seems a masterpiece of engineering. Alike as to plan, execution, and cost it is apparently a marvellous success; while at every step it proclaims the creation of a single mind. Under any sensible system of government, as in any private business, the man who can do that would be marked for advancement to the highest administrative positions; but it may be doubted whether one in a thousand of the citizens, or a much smaller proportion of the inhabitants of the State, even know his name. The work is that of an impersonal body, which, when it is finished, will melt into thin air. The structure will remain, but its

creator will disappear. And we wonder that there are no great men in public life.

The commission estimated the cost of the subway at five millions, but to make sure that they shall have enough the city treasurer of Boston is directed "on the request of said commission" to sell seven millions of dollars of bonds, pledging the credit of said city, the proceeds of said bonds to be used to meet all demands, costs, and expenses incurred in carrying out the provisions of this Act by said commission. How comprehensive these provisions are, and what may be the possible destination of the possible surplus of the proceeds of bonds above the cost of the subway appears from Section 26:—

Said commission may construct a tunnel or tunnels of sufficient size for two railway tracks with approaches, entrances, sidings, stations and connections therefor, and for the running of railway cars therein from a point on or near Scollay Square in the city of Boston, where a suitable connection may be made with the subway or subways provided for by this act, to a point on or near Maverick Square in that part of Boston called East Boston, where a suitable connection with surface tracks may be made.

For those who are not well acquainted with Boston it may be remarked that the work thus cavalierly handed over to five men, with *carte blanche* upon the city treasury, includes about a mile of distance under the most thickly inhabited part of the city, with a further half-mile under the deep waters of the harbor.

It was provided that no work should be done on the subway till the Act was accepted "by a majority of the voters of said city voting at a special election or at some regular election," in either case designated by the mayor. The vote was taken on July 24, 1894, when a large part of the well-to-do inhabitants were absent from the city. The total of votes was 29,667, and the Act was accepted by 15,869, or not exceeding one-sixth part of the legal

voters. The language quoted from the Act is susceptible of two interpretations. It may mean the majority of all the voters of said city when they vote, etc., or a majority of such voters as may vote. The Act was probably intended to be passed on one meaning, and to acquire its validity through the other. The effect would have been the same if not more than one thousand votes had been cast, and six hundred of these in favor of the Act.

It appears, then, that any Act which can be lobbied through the legislature and past the governor, and then smuggled past a popular vote, can be launched upon the State or any town or city, against the wish and the judgment of the mass of the people, helpless for resistance. One of the inferences is as to the folly of the referendum, which will be discussed later.

But the ambition of the legislature was capable of still higher flights. In 1895 was established the Metropolitan Water Board of three persons to hold office for five years, one appointed in separate years by the governor and council, with salaries amounting to \$14,000. Their powers are much the same as those of the transit commission: they have full power to appoint and remove any and any number of employees at their pleasure, and to fix at once their duties and compensation; and are required only to submit an "abstract" of their accounts once a year to the legislature. After a description of certain lands the Act says:—

Said board may take any other lands in fee, easements, rights, and other property that said board may deem necessary or desirable for carrying out the powers and duties conferred on them by this Act.

The object of the board is to construct a storage reservoir and conduit from the Nashua River and a pond in the town of Clinton.

Said board shall incur such expenses as they may deem necessary in constructing, operating, and maintaining the water works; and may agree with any parties injured as to damages to be paid.

Which damages, if the parties cannot agree, must be settled by a lawsuit. To meet the payments called for by the board, the State treasurer is authorized to issue twenty-seven millions of dollars of bonds on the credit of the State, the proceeds to be held at the disposal of these three men.

The value which the legislature places upon the liberty and rights of the people may be illustrated by one example among many in the establishment of the office of State Fire Marshal, created in 1894, with a salary of \$4500, and a deputy at \$2500, for the purpose of investigating the causes of fires.

Section IV. of the Act reads:—

The fire marshal and deputy fire marshal shall each have the powers of a trial justice for the purpose of summoning and compelling the attendance of witnesses before them, or either of them, to testify in relation to any matter which is by the provisions of this Act a subject of inquiry and investigation. Said fire marshal and deputy fire marshal may also administer oaths and affirmations to persons appearing as witnesses before them: and false swearing in any matter or proceeding aforesaid shall be deemed perjury and shall be punished as such. Said fire marshal and his subordinates shall have authority, at all times of day or night, for the performance of the duties imposed by this Act, to enter upon and examine any buildings and premises where any fire has occurred, and other buildings and premises adjoining or near [mark the word] the same. All investigations held by or under them may at their discretion be private, and persons other than those required to be present by the provisions of this Act may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined.

It is a boast under the common law that an Englishman's house is his castle. It seems that that privilege is no longer enjoyed by the citizen of Massachusetts. The tribunal is no doubt less severe than the Spanish Inquisition, but the principle is much the same.

There appears to be no doubt that a great social revolu-

tion is going on in Massachusetts, which threatens not only the character of the government but of the people, and to break with all the great traditions of the past. But it would be grossly unfair and unjust to charge this to democracy, to universal suffrage, or to the people. The people are not aware of what is taking place, as, indeed, they have no means of knowing, and if they were, they are powerless in the absence of proper organization and leadership to resist it. As already observed, they do all that can possibly be expected in placing men of good character in public life. The real evil consists in the suppression of legitimate and responsible executive power, in the absorption of the control of government by the legislature, and the use of it without any check or responsibility and under the pressure of local and private interest and of the lobby. If any stand is to be made against this downward tendency, the only possible force with which to effect it is the strength and determination of the popular will.

CHAPTER XXIII

THE STATE GOVERNMENTS

IT would be beyond the scope of this work to go into a similar analysis of all the other State governments. We can only glance at the common results of organizations substantially the same. As showing how the legislatures tend to absorb and centralize power just as much as a despotic ruler, the following extract from a daily paper is of interest.¹

New England has always been the section of the country where the township had the greatest importance in the government. Each State was made up of a large number of little democracies, which prided themselves upon being sufficient unto themselves in all but a very small number of things which they committed to the State.

And then follows an abstract from the Manchester, New Hampshire, *Mirror and American*.

The township was the ideal republic, upon which all other political divisions were modified up and down. The school and highway districts were subdivisions of the towns, as the State was a collection of towns. Each town was to all intents and purposes independent. Its people, bound together by long acquaintance with each other, by family ties, by common interests, and by pride in their township, managed their own affairs and paid their own bills. They decided what roads they would have built and kept them in repair. They determined how much and what kind of schooling their children needed, and paid the expense out of their own pockets. They supported their own paupers, and left others to do the same. They were not rich, but they would have scorned an offer by the State to do any of these things for them as they would have resented State interference with their internal affairs.

¹ *New York Evening Post*, February 10, 1897.

All this has entirely either disappeared or is fast vanishing. In New Hampshire the highway and school districts have been abolished; State officials have been multiplied, and their functions extended. "The legislature," says the *Mirror*, "regulates our outgoing and our incoming, tells us in what pond we must not catch pickerel, and on whose land we may hunt chipmunks; it dictates what we shall eat and what we shall drink." Now the idea is steadily making headway that the State shall control and support the schools and build the highways.

And the article then goes on to show the same tendencies in Vermont and Connecticut. This article, like most other such essays, speaks as if this were the deliberate wish and action of the people. But there is no evidence of this. There is just as much spirit of local pride and independence as ever. It is the effect of party greed, which, acting through the legislature, is promoting centralization and multiplying offices as the reward of and stimulus to party work; while the absence of common leadership, of any voice in legislation on behalf of the public interest or of the administration of government, the want of personality in the governor which can arouse the enthusiasm of the people and guide their resistance, place them at the mercy of intriguers who know how to manage the legislature. These things are gradually killing out the interest of the people in public affairs and preparing them to submit, after the paternal despotism of the legislature, to that of a strong hand, as, at least in appearance, a lesser evil.

The great State of New York affords, perhaps, one of the most instructive examples of the effect of government by a legislature. To compare with what has been said of Massachusetts take this clause from a message of Governor L. P. Morton to the legislature in January, 1895.

While I think a great reduction in expenditures could, without injury to the public service, be secured in all the departments of the State, I feel that a greater extravagance arises from the multiplicity

of "commissions," which have increased so rapidly in number and expense since about the year 1880. From an expenditure for the duties covered by these commissions of less than four thousand dollars in 1880, we have seen a growth from year to year, until the cost of these commissions alone amounted last year to nearly a million and a quarter of dollars. Some of these commissions are unnecessary and should be abolished. Some of them should be consolidated with or made bureaus of correlative departments of the State government, and by such consolidation a very material reduction in the expense of their operation could be secured. . . . I think the sentiment of the people is more decided now than ever before that some radical change should be made on the lines above suggested. It is our duty to pay attention to this demand.

Observe that this is a mere piece of advice addressed to a legislature, of which the interest, as well as the practice, is identified with the procedure objected to.

On the 12th of November, 1884, Hon. John T. Hoffman, ex-governor of the State and ex-mayor of the city of New York, delivered an address before the Constitution Club, in which he said : —

It is wrong to confound, as some do, concentration of power in proper offices with centralization. To bestow on the governor of this State the power necessary to enforce the laws of the State, and on the mayor of this city all necessary executive power in the administration of the affairs of the city; that is concentration of power in the proper hands, power adequate to the duties and responsibilities imposed. Without this concentration there is no real responsibility; without it we cannot justly hold the chief executive accountable for his due administration of the government; we fail to enjoy what the English-speaking race prides itself upon,—responsible government. But to assign to the governor any of the duties which properly belong to the mayor of a city, to the central government of the State any of the power of control over their home affairs which should pertain to localities, that is centralization. When the legislature by a mandatory act (as it is constantly doing) imposes taxes for purely local purposes upon this or any other city, or any other locality of the State, it violates the first principle of free government,—that a community shall not be taxed without its own consent. . . . The fact that municipalities all over the country have, within the past few years, run largely into debt affords no argument against leaving this subject to local governments. Every debt has been authorized by the superior govern-

ment,—the State. The worst solution of this question is to leave it in the power of the legislature to force indebtedness on you from time to time as is now done.

The framers of the constitution of 1846, under which with a few changes we still carry on what we call a State government, were eager for decentralization of power. They effected nothing of consequence in this direction; they did not secure the rights of cities, counties, towns, or villages in matters of local concern, nor abridge the powers of the State government over local interests.

The chief thing they did was to break apart and disconnect the machinery whereby the State government is carried on. They provided for a governor whose duty is said to be to execute the laws, and to administer the affairs of the State; and then gave to the people, not to the governor, the power to select all the subordinate officers on whom he must rely in their several departments for performing the actual details of administration. They made the mistake of supposing that this was decentralization. They have made other people believe it was, also.

This system did not take away any of the powers of the central or State government. It retained in the central government at Albany the administrative power, but lodged it in and divided it among some half-dozen independent heads of departments, each absolute in his own sphere. It created, in fact, half a dozen governors instead of one, each of them charged with executing a portion of the laws, free from control by the others, or by the nominal head of the State. The comptroller is governor, so far as the finances are concerned. The attorney-general is governor as to the law business of the State. The three state-prison inspectors together made up another governor for the prisons. The administration of the canals was intrusted to a board made up of several independently elected heads of departments, the governor of the State being carefully left out. The so-called "governor," who was in old times often spoken of as "the person administering the government of the State," was charged by the words of the constitution "to take care that the laws are faithfully executed," and at the same time was deprived of all power to select the agents through whom they are to be executed. He was ordered to govern the State, while the power to govern was taken away from him.

It is absurd to expect good government in this State or in this city, until you conform with the experience of ages and establish a single and united executive power.

It has been repeatedly urged in this work that the most effective instrument for moving masses of men is person-

ality. The multitude do not understand measures and take but little interest in them. They do understand and are capable of enthusiasm for men. It is a matter of the commonest observation, whether in the case of artists, poets, actors, clergymen, or statesmen, that it is the individual which fires enthusiasm and draws the crowd. All our public arrangements, on the other hand, are such as to suppress the individual. Trust no one man to do anything. Always have a committee or a commission or a legislature; the effect of which is to discard entirely the immense force of personality. But the attempt defeats itself as surely as that of enclosing steam at a high pressure. The thirst for personality demands and will have satisfaction at any cost. This is the secret of the word 'boss' in politics. And no State affords a stronger illustration of this than New York. The names of Fernando Wood, William M. Tweed, Richard Croker, David B. Hill, and Thomas C. Platt are perhaps more widely known than those of any upright statesmen or public benefactors in the same generation.

Mr. Platt's career is one of the phenomena of the years 1896 and 1897. A business man and the head of an express company, he has held no prominent office in State affairs. Yet it seems to be admitted on all hands that, being a Republican in politics, he has almost absolute control of the legislature of New York. One of his methods is said to be to select young men in the Assembly districts, to pay the expense of their nomination and election, to give them a seat and a salary in the legislature, and to require from them in return absolute obedience. However that may be, there appears to be no doubt that he can procure or defeat legislation at his pleasure and that the doing so is mainly a question of price. When an election for governor was to take place in the autumn of 1896 it was admitted that the members of the Convention were

the nominees of Mr. Platt, that his candidate was nominated without a murmur and duly elected. Mr. Platt himself desired to be elected to the United States Senate. Against him was put forward as a candidate Hon. Joseph H. Choate, a lawyer of the highest personal and professional standing in New York. He had but a few scattered votes as against the master of the legislature.¹

The Republicans, however, are not always in power. A few years ago the Democrats were in the majority and the position of Mr. Platt was then occupied by Hon. David B. Hill, though with somewhat less of tact and skill. But these two great leaders were far too wise to quarrel. A division of the spoil was much more statesmanlike ; so that it came to be said that when the Republicans were in office Mr. Platt divided power with Mr. Hill and when the Democrats had a majority Mr. Hill divided power with Mr. Platt.

The presence of these two men in the United States Senate is a striking commentary upon the structure of that body. It may be described as the distilled essence of State legislatures. If these legislatures are made up and managed in the way which has been described, and if the conditions are the same throughout the Union, the character of the United States Senate can easily be predicted. In several States there is already a parallel to New York. For thirty years Hon. Simon Cameron held the great Republican state of Pennsylvania, as the phrase is, in his pocket, and his mantle has now fallen upon the shoulders of the Hon. Matthew P. Quay. The names of others will suggest themselves to show how the lesson is spreading, and keen self-interest and grasping ambition in all the States will not be slow to copy the models.

The consciousness of these things has raised a demand

¹ See Appendix A.

for a change in the Constitution of the United States by which the Senate should be elected by popular vote. As this must be accepted by the Senate itself as well as three-fourths of the State legislatures, it may safely be pronounced to be impossible ;¹ while the other alternative of a constitutional convention, which would place at risk every principle upon which the Constitution is based, is not to be contemplated without a shudder. It is not at all certain, moreover, that such a change would be desirable and we had much better learn to work the Constitution as it is. The true way to improve the Senate is to improve the State legislatures ; which furnishes another instance of the disproportion between the importance of the State governments and the attention which they receive.

It cannot be said that the finances of the State governments, as a whole, are in very bad condition. Many of them are practically out of debt, and in none can it be said that the demands are very heavy in proportion to the resources of the people. It is in the towns and cities, in which, in spite of the encroachments of the legislature, the bulk of the work of government is still carried on, that the great and increasing extravagance threatens to get beyond control. At the same time the growing tendency to centralization is increasing the scope of State finance, and its conditions are such as may well cause apprehension ; especially as the legislatures are more and more imposing expenditure upon localities to be met from their own debt and resources.

Of system there may be said to be none at all. It has been stated that any member of either house may propose a law upon any conceivable subject, and finance is

¹ In May, 1898, the House of Representatives passed, by a vote of 184 to 11, an amendment to the Constitution to this effect, but the Senate paid no attention whatever to it.

not excluded. All sorts of schemes for expenditure are brought forward and referred to the committees, and their success depends upon the skill and energy of the lobby. And to make the case complete, expenditure and revenue are treated separately. What would be thought of a man who at the beginning of the year should call his wife and children together and ask them how much they wanted to spend in the next twelve months ; and who, when they had handed in their estimates, should simply add them up and say to himself, ' My business must produce so much.' The bankruptcy court could easily be predicted as the not far distant result. Of course, every man not merely of prudence but of common sense makes a more or less careful estimate of what his income will be and then tells his family how much he can afford to allow them. Yet it is precisely the first method upon which all our public finance is conducted, from Congress through all the States and the cities, the effect being concealed by the fact that the resources of the people have not yet been severely strained.

No doubt the Secretary of the Treasury and the auditors of the States and cities do make a statement of the receipts and expenses of the year past and even an estimate for that to come ; but the several legislative bodies are in nowise bound by them. Questions of revenue and expenditure, which may be raised by any body, are referred to different committees. The subjects of taxation are for the most part permanent, while the rates upon them are raised or lowered according to the requirements of expenditure, though new sources, whether or not in accordance with the principles of modern science, are constantly suggested by the free lances who have a hand in everything. On the same principle the lobby needs only to concern itself with expenditure, having no interest in or responsibility for the revenue side of

the account. It is the consciousness on the part of the people of this uncertainty which hangs like a cloud over this as over every other department of the government.¹

One provision of the constitution of Massachusetts may be quoted to show the effect of careless legislation. Up to the year 1855 the governor and lieutenant-governor were voted for by the people at a meeting specially called for the purpose, the persons receiving a majority of the votes cast being elected. If no persons received such majority, the house of representatives was to select two out of not more than four persons receiving the highest number of votes, from which two the senate was to select one as governor; and the same process was to be repeated for the lieutenant-governor. The senators were elected annually by the people at meetings called for the purpose. If no candidates had a majority of votes cast, then the members of the house of representatives and the senators duly elected were to meet together and fill up vacancies from the candidates having the highest number of votes equal to twice the number of vacancies to be filled. As to the representatives, they were also elected at popular meetings, and, though the constitution is silent upon the subject, a majority of the votes cast was presumably required, and the voting had to be renewed until it was obtained. All this procedure had obvious and grave inconveniences. The simple mode of overcoming them was to provide for a second election between the two candidates having the highest number of votes, when a majority must have resulted unless a tie had to be settled by a third election or by lot.² Instead of this, the follow-

¹ Compare on this point what is said in Chapter VI. of the relation of the English chancellor of the exchequer to the national finance.

² An election has just occurred in West Prignitz, a typically Conservative seat in the typically Conservative province of Brandenburg, and the ballot revealed a majority for the Conservative, Herr von Saldern, of 1896 votes over the Radical, Herr Max Schultz, the Social Democrat on his

ing amendment to the constitution was passed by the legislatures of 1854 and 1855, and ratified by the people on May 23, 1855.

ARTICLE XIV. In all elections of civil officers by the people of this commonwealth, whose election is provided for by the constitution, the person having the highest number of votes shall be deemed and declared to be elected.

It may be doubted whether any single law ever did more to undermine and degrade the government of the State. As already observed (Chapter XXI.), it is the fundamental principle of democracy that the majority shall rule. But apart from the question of ruling, there is an important consideration in the effect upon the character and action of the voters. If the largest of any number of fractions is to control the government, then the object of every intriguer, of every ambitious schemer, of every demagogue, of every social theorist, will be not merely to start a fraction of his own, but to multiply and diminish all other fractions that the relative proportion of his own may be magnified. And the more the people are split up into groups, the more do they not only become confused and discouraged, but also become absorbed in their own idiosyncrasies, to the neglect of the general public interest. Instead of using two large parties to

part carrying off 2015 votes, and the Anti-Semite, who may be described usually as a foe to capital but not to society, only 1909. As, however, Herr von Saldern had less than half the total number of votes recorded, a second ballot was held on Sunday last, when the whole body of Socialists went to the polls, drawing with them some Anti-Semites, and the Radical was seated by 7481 votes against the 5999 of his Conservative opponent, receiving, moreover, a majority of 639 over the half of the unusual number (13,485) recorded at the poll.

On the honesty and intelligence of the average man we must ultimately rely for our security. But the modern problem is how to provide amid our vast aggregations of people for the necessary control of public men by their masters, the public; how to carry on business, so to speak, in the open with criticism alike free and well informed, and with adequate supervision. — *Spectator*, London, November 13, 1897.

check and control and if need be to replace each other, and stimulating them by competition to raise the common level, the voter who, as is not unlikely, becomes disgusted with both will turn away, and leaving them to their unclean struggle will hug his conscience by devoting himself to some side issue, as prohibition of the sale of liquor, woman suffrage, particular systems of taxation, religious faith, and so on, watching his fraction and hoping it may grow to outnumber any other ; in which effort he will be strenuously encouraged by the cunning politician, who, though he cannot command a majority of the voters, may hope by the tie of self-interest to wield the force of the largest group. Still another and large fraction of voters will be led by the multiplying of groups to abstain from voting at all.

It is for this reason that the national party names of Republican and Democrat have kept such a firm hold even upon State and city affairs, though they have absolutely no meaning in relation to them. The political sense of our people has made them cling to this line of division, so that the plurality principle has not yet effected all the harm of which it is capable.

Election by plurality tends further to destroy the element of personality which is so important in moving multitudes. If the two great parties are personified in individuals it is easy to awaken enthusiasm as between them, but if the voters can be led off in pursuit of separate and pet ideas, the individual has much more difficulty in calling them back, particularly under political methods which of themselves make it a prime object to suppress personality on all sides.

If the voters in a mass are ever to be taught to have confidence in each other, to rise to enthusiasm, to act together, and to put forth their strength on behalf of good government, election by majority must be insisted upon.

It may be said that we have too many elections now, and that second elections would be intolerable. But first, if only a single executive head was voted for the elective function would be considerably reduced; secondly, if we are to have free government we must submit to the trouble of elections; and thirdly, second elections would seldom be necessary, as, if the people once understood that they must elect by majority, they would learn to close their ranks at the start. It may be asked, "How are reforms to be brought about in State affairs if the only agency is a majority to be extorted from the solidly intrenched national parties?" They must be advocated and urged forward by fractional votes — even though those votes are displaced by second elections — till the demand is strong enough to command a majority either within or outside of those parties. For this personality is the only effective, as it is an entirely adequate, instrument. Reforms obtained through the establishment of a plurality system are pretty certain to cost more than they are worth, since that system may be readily made use of to introduce changes which are far from being reforms.

This election by a plurality of votes has now become widely established throughout the Union. Perhaps as good an illustration as any at once of the effect of plurality election and of the supremacy of the national parties may be taken from the city of New York. In the year 1884 the votes for mayor were, for —

Gibbs, Republican	44,881
Grace, Citizen and Democrat	96,298
Grant, Tammany Democrat	85,891
	<u>226,065</u>

In the year 1886 : —

Roosevelt, Republican	59,857
Hewitt, Democrat	88,933
H. George, Labor	65,960
Wardwell, Prohibition	518
	<u>215,268</u>

In 1888 :—

Erhart, Republican	73,037
Grant, Tammany	114,111
Hewitt, Democrat	71,979
Coogan, Labor	8,299
Jones, Socialist	1,619
	<u>269,045</u>

In 1890 :—

Delmar, Socialist	4,280
Grant, Tammany and Democrat	115,164
Scott, Fusionist and Republican	98,952
	<u>218,346</u>

In 1892 :—

Gilroy, Tammany Democrat	178,510
Einstein, Republican and Anti-Tammany	97,923
Jones, Socialist and Labor	6,295
Hicks, Peoples' party	2,466
Bogardus, Prohibitionist	2,575
	<u>282,769</u>

In 1894 :—

Grant, Tammany and Democrat	108,907
Strong, Republican and Anti-Tammany	154,094
	<u>263,001</u>

In 1897 :—

Van Wyck, Tammany Democrat	233,997
Tracy, Republican	101,863
Low, Citizens' Union	151,540
George, Jefferson Democrat	21,693
Sanial, Social Labor	14,467
Wardwell, Prohibitionist	1,359
Cruikshank, Union Democrat	615
Gleason, Independent	1,028
	<u>526,557</u>

Necessary for a majority 263,279

In the first two of these periods the elections were under a new charter for the city, and the interest felt in the greatly extended powers of the mayor secured the victory, notwithstanding the disintegrating effect of the plurality system, of two men of very high character, Messrs. Grace and Hewitt. After this the influence of the national

parties sets in, which, though they have nothing to do with the government of the city, are under existing conditions the only consolidating element. In 1888 the dissatisfaction with the Republican party, which was to bear such fruit two years later, enabled the famous Tammany association to secure the mayoralty for its agent, Mr. Grant, though he had twenty thousand votes less than a majority. In 1890 the national Democratic tide, which was alluded to in Chapter XXI., was in full operation and Tammany again elected its candidate; the falling off in the total vote of more than fifty thousand, or twenty per cent., showing how much less interest was felt in the city than in the national election, notwithstanding its much greater importance to the citizens. In 1892, when Mr. Cleveland was elected and the Democrats were on the top of the wave, the Tammany candidate was swept in by a majority of nearly seventy thousand, or twenty per cent. But in 1894 the revulsion of feeling throughout the country reversed the situation, and the Republican candidate for mayor of New York was borne forward by it with a majority of forty-six thousand, or seventeen per cent. In November, 1897, occurred the first election separating the voting in New York City from the State and national. The figures are given here merely to show the working of the plurality system. The significance of the election itself is treated of elsewhere.¹

If there is one common tendency apparent throughout all the States, it is that towards removing the government as far as possible from the people. The reasons for this on the part of politicians are very obvious. Their aim is to control the power of making nominations, to let the people go through the form of election and then to cover up and conceal the working of the machinery. But there is much more than this. The educated and well-to-do

¹ See Chap. XXV.

classes, distrustful of the people and attributing all the defects of government and all the arts of politicians to them, are by a large majority strongly inclined in the same direction. This feeling shows itself, among other ways, in establishing less frequent elections and after these less frequent sessions of the legislature.¹ The terms of office for the governor have been extended in 20 States to four years, with 1 at five years, and in 22 States to two years, while in 2 States only is the term still retained at one year. The terms of senators are now fixed in 29 States at four years, in 13 States at two years, with 1 at three years, and in 2 States at one year. The terms of representatives are in 2 States four years, in 40 states two years, and in 3 States one year. In 40 States this tendency is extended to biennial sessions of the legislature, as against 5 in which it meets annually.

In discussing this subject we have to recur to the main question which has already been propounded, What is the moving force upon which our form of government relies?² If the answer is taken to be the will of the people, then the arrangements must be such as to call forth the will of the people, and to keep them in a mental condition for the exercise of that will. It is to be remembered that in this country, whatever may be the case elsewhere, we have no class of men of wealth, education and leisure, who take pride and exercise ambition in devoting themselves to public affairs with the sole view of securing the best results for government and the public welfare. This

¹ The Americans seem to reason thus : " Since a legislature is very far gone from righteousness, and of its own nature inclined to do evil, the less chance it has of doing evil, the better. If it meets, it will pass bad laws. Let us therefore prevent it from meeting." They are no doubt right as practical men. They are consistent as sons of the Puritans in their application of the doctrine of original sin. But this is a rather pitiful result for self-governing democracy to have arrived at. — BAYNE, " American Commonwealth," Vol. I., Part II., Chap. XLV.

² See Chap. III.

work has endeavored to show that our arrangements are such as to expel that kind of man from public life ; to conceal from the people the quality and character of the men whom they have elected ; to render the voters apathetic and indifferent to the extent of leaving public affairs to take care of themselves and to drift into less desirable hands. Certainly the way to remedy these things is not to diminish the intervention of the people ; to decrease still further their interest in the elections through the greater infrequency of their recurrence. No doubt the multiplication of elections, national, State, and city, does make demands upon the time and attention of the voters, but, in the first place, these may be greatly simplified by reducing the number of offices to be filled. To elect a single executive head and a single legislative member is not such a great strain upon a population ; and if there can be added the stimulus of clearly emphasized personality, the elections instead of a burden will become an agreeable excitement. Moreover, if we are to have free government at all, the price must be paid. The postulate upon which this work is based is, that this whole country — city, State, and nation — is suffering from a preponderance of legislative power and depression of the executive, and that the conflict of the future must be for a readjustment of these powers. Of course no help can be expected from the legislatures, and if the question is not to be referred in accordance with historical precedent to the brutal tribunal of the sword, the appeal remains only to the will of the people, and that this weapon may be effectual it must be kept in good working order and practice. As has already been said, the elections are our autumn manœuvres. As the French and German armies meet every year to be kept in training for war, so our people need their annual drill for the victories of peace. Possibly, if at some future time the different branches

should be brought into such harmonious adjustment that government goes on quietly and visibly to the general satisfaction of all, some relaxation of discipline may be allowed. But never in our history has there been a more pressing need for the application of the hackneyed saying that "Eternal vigilance is the price of liberty."

In the year 1896 there occurred in Massachusetts a striking illustration of this point. For twenty years past there was a persistent agitation with the legislature in behalf of biennial instead of annual elections, but it always met with defeat in one or the other of the houses. At length, however, chiefly by the action of Boards of Trade and with strong pressure through the lobby, an amendment to the constitution was forced through two legislatures in 1895 and 1896, providing for biennial elections both of the executive and the legislature. The principal argument in favor of the change was the saving of the trouble, annoyance, and expense of too frequent elections, and this was backed by the example of more than forty other States, who, it was said, had adopted the policy and showed no wish to go back from it. So far the case was at least based upon facts, but the advocates proceeded to assume that it would remedy the evils of too much legislation, of too long sessions, and furnish more experience and a better class of public men, for which no evidence whatever was offered.

It was replied that the expense was too trifling for consideration—as indeed this item was not insisted upon—and that the trouble was no more than a free people ought to be willing to take. As for the experience of other States, it was urged that though the people might be glad to be relieved from trouble the effect of the change, so far as it has been developed, has been distinctly unfavorable to the character of the government and the people of those States; that it has weakened the interest

of the people in public affairs and prepared them for further changes subversive of their liberty. As regards the political effects which were expected to follow in this State, the reader of this book will not need a recapitulation of the arguments against such expectation.

But the less frequent elections were but a small part of the import of the bill. It was proposed to place the State elections in the same year with the national, and to combine the votes for State officers on the same day with those for the President and members of Congress. The effect would have been to put all State issues more completely out of sight and farther from the public interest than they were before ; to make all State offices, from the governor down, merely weapons in the hands of the national parties ; and, in the view of those who look at the subject from this side, to seal the fate of popular government in the United States by dragging Massachusetts into the abyss which has already engulfed the other States. It was this consideration which chiefly aroused resistance. Resistance appeared indeed almost hopeless. The great majority of the wealthy and educated, especially in the cities, was disposed to favor the amendment. A large part of the newspapers, in Boston nearly all, took the same side. The fact of its passage by two legislatures could hardly fail to carry great weight with the people. There was no organization, such as enables the great national parties to carry on a powerful canvass through the State, and lastly the vote was to be taken in the midst of the absorbing excitement of a presidential year. Upon this subject it would doubtless be very small and mainly by those who would take interest enough to vote Yes.

But it is not the first time that enthusiasm for a principle has stimulated even an apparently hopeless resistance in Boston. An Anti-Biennial League was formed,

having for its officers leading members of all political parties. Appeals were made to all society organizations. Communications were sent to the newspapers and leaflets distributed at public meetings. An address was issued to the voters signed by a number of the leading clergy of the State. In the week preceding the election more than twelve thousand posters were put up in the various towns and cities with an appeal to the people. The returns of the election gave : —

For the President a total vote of	396,436
For the governor	376,080
For the amendment	115,505
Against it	161,268
Total	<u>276,768</u>
Or a majority of	45,758

It was one of the largest votes ever given upon a constitutional amendment. Henceforth the writer of this work at least can attach no weight to depreciatory attacks upon universal suffrage, at all events in Massachusetts. The value as a campaign of education can hardly be overrated. It aroused a common feeling of interest in the voters in State affairs, taught them to act together and to rely upon each other. It has distinctly cleared the way for the reforms which are imperatively called for within the State.

What has been said in Chapter XVII., as to the effect of methods of doing business upon the quality of the men in Congress, is equally if not more true of the States, from the governors down through not only the executive offices but the places in the legislature. Everywhere public office is not a question of something to do but of something to receive. The impersonality which reigns throughout is an effectual bar to the winning of reputation, though by no means to the same extent against

losing it, while it does offer a shield against responsibility. Men of ability and experience will not seek or even accept such places. For young lawyers seeking practice they give a certain amount of publicity, while for older ones, as well as men of business who are not burdened with occupation, and for men of leisure, they offer attraction in a moderate salary and incidental advantages. But, speaking generally, the men who seek public life must be either wanting in knowledge or experience enough to appreciate its insignificance, or of a kind who are willing to devote themselves to hard labor for the public service without hope of recognition or reward, or lastly those to whom the prospect of material gain, either legitimate or illegitimate, is the one important consideration. A man who had been recently for two years in the Massachusetts legislature stated as the mature result of his observation that about 150 of the 240 members of the house were honorable and upright men, though without any very definite ideas or purpose, perhaps of the first of these classes; that about one-half of the remainder were what are known as "cranks," that is, theorists, not necessarily bad, many indeed with good and even lofty aspirations, who may be ranked in the second class; and the remainder of the third class, that is, who are open to be bought. And this is probably pretty near the general estimate of the character of the body.

Since public office represents not something to do but something to get, a rapid rotation in the enjoyment of it is a logical consequence. Men are chosen not for the public service which they are expected to render, but because the aspirants for office, knowing that they cannot all hold it at once, combine to make way for and support each other in turn. Of course with the number engaged in the game the innings must be short. That this involves permanent rawness and inexperience in the legislator is a

matter which receives very little consideration. Exactly in the same direction is the restriction already referred to as a custom in national affairs, but which in almost all the States is a part of the constitution, — that candidates for the legislature must be residents of the districts from which they are chosen. If public office were assigned with a view to public service, past and future, there would be no more reason for such restriction than in relation to the employment of a physician, a lawyer, or a business agent. But if public office is merely a plum to be enjoyed without responsibility, it is perfectly natural to wish to keep it within the limits of a certain circle. One of the arguments in favor of biennial instead of annual elections was, that the members of the legislature are changed too often and that a two years' term would secure men of greater experience. It was answered that the effect would be exactly reversed. At present a full half of every legislature has been there for at least one term, and they serve to break in and train the new members, who in their turn act upon the next set. But while in the competition for place the districts are generally willing to give a second one-year term, they would be much less willing to do so for a two-year term, which would extend the whole period to four years; and the real effect would be to bring in a wholly green legislature every two years, which would have no transmission of experience and would have actually less than those annually elected. And this reasoning was strengthened, among other instances, by the example of Vermont, which has about the same number of members and senators as Massachusetts. In 1868, the last year in which elections occurred under the annual system, there were reelected eleven senators and ninety-six representatives. In 1890, under the biennial system, there were reelected no senators and only four representatives. In 1892 there were reelected three senators and

fourteen representatives. In 1894 there were reëlected no senators and only nine representatives.¹

There are other general features common to all the State governments. In a former chapter it has been argued that one great cause of the difference between English and French history lay in the fact, that in England at least the upper and middle classes in their resistance to the Crown were trained, to act together, to make mutual concessions, and to mutual confidence and support; whereas in France the Crown pursued a steady policy of sowing dissension and distrust between classes and thus prepared the way for the Revolution of 1789. Now the present methods of State government are tending to the same result. The secrecy of the committee system, the power of the lobby, the log-rolling which is necessary to procure legislation and which is equally strong to prevent any, the absence of any guiding and mediating authority, of any executive government to which individuals or classes can look for protection, and of any personal responsibility; these things are constantly increasing distrust and suspicion between the poor and the rich: the poor regarding the rich more and more with jealousy and hatred, and the rich regarding the poor with contempt. This is none the less true that there was never perhaps a time when there was more personal sympathy and more effort to relieve the hardship of social inequalities. The teachings of religion, the promptings of human sympathy and brotherhood, are maintaining an unequal contest against the working of government.

Perhaps no better illustration can be given than in the relation of railroads to the people, especially in the West. There can be no doubt that these roads have been an immense boon to the country, raising the value of land,

¹ "Biennial Elections," by Raymond L. Bridgman, Chap. IV., April, 1896.

providing a market for crops, and rendering life easier to the inhabitants than it could possibly be without them. The very competition which has been so disastrous to the roads themselves and to the holders of their securities has added to the advantages and facilities of dwellers along the line. The severity of this competition has led to the adoption of measures which may be, perhaps are, unjust, as for example what is known as long and short haul rates, rebates to large shippers, and so on. The property of the companies of course is and must be fixed within certain limits within the State and whatever happens cannot be removed. It is therefore at the mercy of hostile legislation. The inhabitants, perhaps naturally, are always wanting lower rates and greater facilities, and complaining of what they regard as unjust discrimination. A strong government is, therefore, of the first necessity between the two, not merely to enforce obedience to law, but to produce a conviction on both sides, that both law and administration are at least meant to be just and impartial; and more than this, to make each side understand the position, the feelings and arguments of the others; in short, to cultivate a spirit of conciliation and forbearance instead of that of hostility and violence. Such a government is conspicuous by its absence. In its place we find legislatures of the kind and working by the methods which have been described. The railroad companies, representing mostly foreign capital, would be only too glad to have some strong authority to which they could look for justice and protection. Instead of that they are obliged to keep agents at the legislature, and to go through the continual process of lobbying and log-rolling already described, whether to secure necessary facilities or to save themselves from blackmail and robbery. The people, on the other hand, knowing that these underhand processes are going on and not knowing their exact char-

acter, become jealous and exasperated. Members are sent to the legislature for the purpose of opposing the railroads, but with no certainty that they do not play into their hands. The only refuge from such a situation was found in having recourse to the federal power and the Interstate Commerce Commission.

The latter consideration suggests the question of political intercourse between the States. At present it may be said to be almost literally nothing; much less than any of the states of Europe have with each other. Certainly it is not for the want of subjects of common interest. A uniform bankruptcy law is one of the things most needed, and the same may be said of naturalization, divorce, transportation, real estate conveyancing, inheritance of real and distribution of personal property, court procedure, and many other subjects, as to which mutual consultation and arrangement, without being obliged to have recourse to the federal government, would be of great advantage. If the States had responsible executive government, representing the whole population and the administration, with power to urge action upon their legislatures, and to secure propositions from and transmit them to the executives of other States, interstate negotiations would become possible. As it is they are out of the question. The only possible means of communication is what is known as "junketing" committees. They can, if so disposed, inquire into an existing state of facts, but as regards negotiation they can only apply to the governor, who, as has been shown, has no power whatever in the matter, or to another committee of the local legislature, which has quite too much on its hands to give any attention to them.

It has been observed that the chaotic condition of the legislature and the absence of executive control leave the government at the mercy of a determined minority, even of a group, which knows how to handle the machin-

ery, and that no condition of society is safe from the most revolutionary attacks. While this is equally true of all the States, an illustration may once more be drawn from Massachusetts.

In 1894 there was established by Act of the legislature, approved by the governor, a board of three Metropolitan District Commissioners to investigate the following subjects : —

First. The advisability of establishing a general government with limited powers for the city of Boston and the surrounding cities and towns, allowing each municipality independence in local affairs, but conferring upon the general government authority in matters which can be administered to better advantage by a general government.

Second. The advisability of uniting such cities and towns into one municipality by annexing the same, or any of them, to the city of Boston.

Third. The advisability of any other system of entire or partial union of such municipalities for purposes of municipal administration.

The board, without salary, was granted \$4000 for expenses, and to report within a year. In 1895 the time was extended for a year with a further expenditure of \$4000. In 1896 twenty-five hundred additional copies of the report were ordered, making five thousand in all. The history of the bill, as recorded in the House Journal, is as follows : —

January 25, 1894. Introduced on Leave.

By Mr. Bennett of Everett, a Bill to establish a Board of metropolitan district commissioners and to define its powers and duties. Read and referred to the committee on Cities.

January 26, 1894. Petitions Presented.

By Mr. Bennett of Everett, petition of Woodward Emery, Sylvester Baxter, E. M. McPherson, J. Howes Norcross, and others in aid of the Bill. Referred to the committee on Cities.

January 30, 1894. Bill Ordered Printed.

On motion of Mr. Bennett of Everett, it was voted that the Bill be printed as a House Document (House, No. 97).

March 23, 1894. Reports of Committees.

By Mr. Wellman of Malden, from the committee on Cities, that the Bill ought to pass.

March 28, 1894. Reports of Committees.

By Mr. Mellen of Worcester, from the committee on Finance, that the Bill ought to pass.

April 9, 1894.

On motion of Mr. Wellman of Malden the Bill was read a second time.

May 10, 1894. Taken from the Table.

Pending the question on ordering the Bill to a third reading, Mr. Bennett moved that it be postponed for further consideration until Wednesday, May 16. After debate the motion prevailed 76 to 33.

May 16, 1894.

After debate, the previous question having been ordered, on motion of Mr. McCarthy of Boston the Bill was ordered to a third reading.

May 24, 1894.

On motion of Mr. Bennett, the Bill was read a third time, and, after two amendments had been rejected, was passed to be engrossed and sent up for concurrence. Rule 15 was also suspended on motion of Mr. Bennett: this rule being, that the clerk shall retain bills and other papers in reference to which any member has a right to move a reconsideration until the right of reconsideration has expired.

May 28, 1894.

The Bill having been engrossed was enacted, signed, and sent to the senate.

This procedure was almost exactly duplicated in the senate, but apparently without any connecting link with the house, except what might be furnished by the promoters of the bill. On the 26th of January, 1894, the day after its introduction in the house, the bill was introduced in the senate, and referred to the committee on Cities. On January 29 the same petition above referred to—and the only one recorded on this important subject—was presented to the senate. On May 22 the committee on the Treasury reported that the bill ought to pass. On May 23 the bill was read a second time, and

on May 24 a third time, while on May 31, having been engrossed, it was passed to be enacted, and was ready for the governor's signature, which it received in due course.

In 1895 a resolve, extending the time of the commission for one year, went through every step of the same procedure both in the house and the senate, being apparently wholly mechanical and without debate.

Here is a subject of immense importance, involving the government and therefore the welfare of a million of inhabitants, yet from the beginning to the end no voice is heard with regard to it from any single person representing the whole State or even the whole of the district involved, or who is in any way responsible for the government of the State. It was first introduced by a member from one of the two hundred and forty districts of the State. All who spoke upon it were of the same kind. As far as the house was concerned there appeared in support of it a single petition, bearing names of no particular weight or reputation in the community. The committee was made up of members of the same kind. The witnesses who appeared before it were of course mainly those who favored the object of the bill. Nobody else would take interest enough to appear at all. And as those who did appear were assumed to represent the public, the committee recommended the bill, which accordingly was passed and signed by the governor. Equally, of course, the men who were appointed on the commission were not placed there to investigate the subject impartially. Those who had engineered the bill through took good care that the names suggested to the governor were those of men who would actively promote the scheme which they favored. And after these men had spent two years and \$8000 of the State's money, they were certain not to report that the scheme had better be abandoned.

Their report as finally made is most interesting as a

political study. They confess frankly at the outset, and with several repetitions, that they have found no general wish, either in Boston or the surrounding cities or towns, for the annexation of the latter to Boston, and they therefore distinctly abandon that idea. But they could not let their work go for nothing ; and they proceed, as by the Act they were clearly authorized to do, to propose a wholly new form of government. They proposed to submit to a vote of the people of twenty-nine cities and towns — Boston having about five hundred thousand inhabitants, and the rest taken together about as many — whether they wish to be united to form one county. If they voted Yes, then the governor was to appoint a commission of five persons to draw up a plan of government by a county council with representatives, who certainly could not be less than fifty or sixty in number, from the component parts. This council would be endowed with legislative functions and choose its executive subordinates. It would require too much space, though it would be easy, to point out the absurd and impracticable character of this scheme. It is enough to say that it would involve a complete political revolution in the character and traditions of our government. Thus, to take one particular, whereas through the nation, the States, and the cities, we have now at least a nominal if comparatively impotent executive head, this plan proposes to abolish altogether a separate executive branch, and to vest both executive and legislative power in a single representative body.

This concrete example will show the kind of procedure in legislation which is going on all over the United States. Here are three men of undoubted honesty and singleness of purpose — business men of unstained reputation, but whom the internal evidence shows to be ignorant of the first principles of government — who are intrusted with the formation of a plan for turning our whole political

system upside down ; and the only tribunal to which it is submitted is a committee not very much above an ordinary jury, and without the guidance of a judge. Fortunately, in this case the committee reported to refer the plan to the next legislature, but if they had done otherwise there is no reason why it should not have been launched upon all these inhabitants, powerless to resist.

Observe, further, that this is an extremely favorable case, because there is no doubt as to purity of intention and correctness of procedure. If we can imagine the multitude of schemes based on pecuniary gain, and backed by the power of the lobby, we shall see plainly enough why it is that the State governments are filling men's minds with despair. Yet here again it must be urged that the fault is not with democracy or universal suffrage, but with the organization of government. The retort of course will be that this want of organization is precisely the fault of democracy ; but the rejoinder is, that this is a pure begging of the question, and that at least another century must pass before that can safely be said of the people of the United States. And is history, then, so full of the successes of royal and aristocratic government in this respect ?

A collection of messages lies before us, addressed by the governors of different States to their respective legislatures in the year 1895. They all have the same character of paternal exhortation from the outside, as if the writers had really nothing to do with the government, but were expected only to furnish information and advice to the legislature with which the whole government really rested. Flashes of light, however, are here and there shed upon the items of internal organization above described. Thus Governor Morrill of Kansas : —

There seems to be no system of checks or counter-checks on any of the State boards. The Board of Charities expend about \$350,000

per year. They make their own contracts, audit their own accounts, and manage matters after their own will. There is no provision even for the investigation of their accounts, except when the legislature is seized with a spasm of virtue, and examinations of this kind are of but little value.

And he then points out a method by which they should be brought under the control of the governor, to which it is safe to say the legislature paid no attention whatever.

Governor Griggs of New Jersey :—

I consider it most important, however, that you should at once take into consideration the object of restriction in the volume of legislation. The mass of statute law has now become so immense that it may be said to be almost beyond the power of the legal mind to acquire it or of the judicial mind to interpret it. . . . The same tendency to multitudinous and slipshod legislation prevails in other States of the Union, and has attracted the attention of many thoughtful persons. Besides the uncertainty and confusion that ensue from the existence of so many separate statutes, the easy change of existing law tends to create popular disrespect for the sanctity of the law. What can be so readily made and so easily altered can fairly be considered of small importance.

Governor Culberson of Texas, in a special message of March 5, 1895 :—

The legislature has practically been in session sixty days, in which time the constitution contemplates that the work of the session may be accomplished; and the fact that no measures of urgency or general importance have been enacted into laws, impels me to call attention anew to those of large consequence and the imperative duty which confronts you in reference to them.

The grades of crime in our State involving moral turpitude are increasing, and our code of criminal procedure, enacted to encourage and encompass miscarriages of justice, is permitted to remain unchanged against a just demand approaching popular revolt.

Conspiracies against the freedom of trade, entrenched behind organized capital and impelled by avarice and greed, dominate our commerce and every year take deeper and more dangerous root. From many quarters the legal department of the State government is receiving requests and demands from the people for protection against them, but is unable to render it for want of adequate and effective remedies.

The danger to the public schools is both imminent and wide-reaching, and legislative delay is astonishing. There is already a deficiency of \$700,000 in the fund, and with that which is certain to accrue this year it will amount to \$1,500,000 at the end of the present scholastic year. Unless some action is taken at this session this deficiency will approximate \$2,225,000 at the end of 1896.

Governor Nelson of Wisconsin : —

In conclusion permit me to suggest to you the importance of exercising economy both in appropriation and legislation. . . . Excessive and burdensome legislation, legislation to meet a lot of petty ills that are more easily cured within the realm of moral suasion, is one of the tendencies of our times, in respect to which we ought to practise a little self-restraint. The people can be burdened with too much and too cumbersome legislation as well as with too lavish expenditures and too heavy taxes.

Governor Hart of North Carolina upon uniform legislation : —

The object of this legislation is to secure in the States of the Union a uniform system of laws, regulating the most important and frequently recurring conditions of our society. . . . As it is now each State has its own local system, in which no consideration is given to those of the others. As a result there is great confusion, conflict, and frequently serious pecuniary loss. Particularly is this so in the proof of the execution and authentication of deeds, wills, and other instruments upon which the titles of property depend, and in the laws regulating marriage and divorce, and those regulating the transmission and collection of commercial paper through the banks.

Governor Cleaves of Maine : —

January, 1893. A careful examination of the laws of 1887, 1889, and 1891, discloses the fact that more than four hundred and fifty pages in each volume are devoted to private and special legislation; a large portion of which relates to business corporations, for the incorporation of which ample provision existed under the general laws of the State at the time of granting such charters.

January, 1895. The absolute power to appropriate money is with the legislature. The authority is given you, and under the constitution the responsibility rests where it should, — with the honorable senators and representatives. The party in control of the State government is responsible for all legislation and for every expenditure of public money.

Governor Carr of North Carolina : —

In this State the responsibility for legislation is not a divided one between the legislative and the executive branches as in the federal government and in many of the States. Under our constitution the governor has no veto power; the most he can do is to recommend, and the whole responsibility is made to rest with the legislature. . . . If the changes you make fail to accomplish such results the responsibility will rest on you, but the people will have to bear the burdens and pay the expenses of your experiments.

Governor O'Ferrall of Virginia : —

You have ninety days before you for work, every available hour of which will be required for the faithful discharge of your important duty. My own long experience is that it is the rule with legislative bodies to delay and only to enter earnestly upon their labors when compelled by the nearness of adjournment. It is in these last days of a session that ill-matured legislation occurs.

Governor Shortridge of North Dakota : —

Much of our past legislation has been reckless, hasty, and ill-advised, to say the least of it; and it is to be hoped, for the honor of the State and the credit of this legislative body, that many practices which have characterized our legislatures in the past will be omitted by you. . . . The present financial condition of our State is not satisfactory, and is the result of the excessive number of State institutions authorized by our constitution and brought into existence by legislative enactments. Others of like character will no doubt claim recognition at your hands at an early day.

Governor Atkinson of Georgia : —

The standard of the civilization of a people, the efficiency and character of a government, are determined not by the laws which it enacts, but by those which it enforces. . . . The responsibility of needed legislation is upon you, and I shall confidently rely upon your doing your full duty.

Governor Cotton of Connecticut : —

It is probably true that some of the influences accompanying and to a greater or less degree shaping the legislation of the State have been now and then for years of such character as to constitute offence against the rights and interests of the people.

It is currently thought to have happened that arrangements have been made between persons outside with members inside of the Gen-

eral Assembly to divide the gains secured by combination to delay or hasten, antagonize or promote measures proposed, according to which course would afford the best financial results to the parties to such arrangements.

Governor Stone of Missouri : —

The most significant feature of this resolution (passed by the house of representatives) is the assertion that the State Board of Equalization at its last meeting "placed an additional value of \$65,000,000 upon the farm property of the State" (instead of increasing the taxable wealth of the railroads until railroad property shall bear its equitable share of taxation). Acting upon this information the house has been unwittingly misled into making a statement which is without foundation in fact; and proceeding from that premise has been betrayed into an unwarranted criticism of the State officials. It is not true that the State Board of Equalization at its last meeting placed an additional value of \$65,000,000 upon the farm property of the State. Nor was any such thing done at any former meeting of the board. It has never been done at all.

Governor McGraw of Washington : —

It is recommended that early in the session you compel the consideration of appropriations essential to the conduct of public business and the maintenance of the public institutions, so that the legal expenditures of the forthcoming fiscal term may not be made, as they have been in the past, the riders of an overlapping omnibus bill, hurriedly enacted in the closing hours as the result of heedless compromises between sectional or official claimants for public funds.

The following passage in an otherwise serious message of Governor Waite of Colorado is significant of the estimate placed upon public life in the States : —

I endorse the suggestion of the attorney-general for the abolition of capital punishment, and suggest by way of substitute, that the most hardened criminals be compelled to run as candidates for some State office.

This chapter may well be summed up with another quotation from Mr. Bryce : —

The real blemishes in the system of State government are all found in the composition or conduct of the legislatures. They are the following : —

Inferiority in point of knowledge, of skill, and sometimes of conscience, of the bulk of the men who fill these bodies.

Improvvidence in matters of finance.

Heedlessness in passing administrative bills.

Want of proper methods for dealing with local and special bills.

Failure of public opinion adequately to control legislation, and particularly special bills.¹

The reader will judge how far an explanation of these things has here been given.

The practical result of these blemishes has been to create a large mass of State and local indebtedness which ought never to have been incurred, to allow foolish experiments in lawmaking to be tried, and to sanction a vast mass of private enterprises, in which public right and public interests become the sport of speculators, or a source of gain to monopolists, with the incidental consequence of demoralizing the legislators themselves and creating an often unjust prejudice against all corporate undertakings.²

In leaving the discussion of State government, it will be noticed that the subject of the judiciary has been passed over in silence. Certainly this is not because it is the least important branch or has less bearing upon the main question, but because, as with the federal judiciary, the present writer feels unable to deal with it, and is compelled to leave it to more competent hands.

¹ "American Commonwealth," Vol. I., Part II., Chap. XLV.

² *Ibid.*

CHAPTER XXIV

CITY GOVERNMENT

IT may be said that there is no subject with which government is concerned in the United States more important than the government of cities. By the census of 1890 there were in the whole Union 124 cities having 25,000 inhabitants and upwards, and 646 cities and towns having from 2500 to 25,000. The facilities of transportation, and the comparative annihilation of distance consequent thereupon, have greatly increased the tendency to the accumulation of population and wealth in these centres and to render it more and more difficult to hold the forces of social conflict in check. The problem, however, is substantially the same as with the State and federal governments,—how to establish executive power strong enough to insure order and security, to command public confidence, to give the freest possible play to individual liberty and enterprise, and to give preponderance to the widest and soundest expression of public opinion; and this uniformity of condition tends greatly to simplify the remedial treatment of the whole subject. Mr. Bryce says:—

We find in all the larger cities —

A mayor, head of the executive, and elected directly by the voters within the city.

Certain executive officers or boards, some directly elected by the city voters, others nominated by the mayor or chosen by the city legislature.

A legislature, consisting usually of two, but sometimes of one chamber, directly elected by the city voters.

Judges, usually elected by the city voters, but sometimes appointed by the State.

What is this but the frame of a State government applied to the smaller area of a city? The mayor corresponds to the governor; the officers or boards to the various State officials and boards elected, in most cases, by the people; the aldermen and common council to the State senate and assembly; the city elective judiciary to the State elective judiciary.¹

And then he adds: —

American municipal governments are of course subject to three general rules: that they have no powers other than those conferred on them by the State, that they cannot delegate their powers, and that their legislation and action generally are subject to the constitution and statutes as well of the United States as of the State to which they belong.²

It may be well to consider first the institutions upon which our local self-government was originally based. As Mr. Bryce points out, the township was in New England the keystone of the whole system.

The first New England settlers were largely townsfolk, accustomed to municipal life and to vestry meetings. They planted their tiny communities along the seashore and the banks of rivers, enclosing them with stockades for protection against the warlike Indians. Each was obliged to be self-sufficing, because divided by rocks and woods from the others. Each had its common pasture on which the inhabitants turned out their cattle, and which officers were elected to manage. Each settlement was called a Town, or Township, and was in fact a miniature commonwealth exercising a practical sovereignty over the property and persons of its members — for there was as yet no State, and the distant home government scarcely cared to interfere — but exercising it on thoroughly democratic principles. And though presently the towns became aggregated into counties, and the legislature and governor, first of the whole colony and after 1776 of the State, began to exert their superior authority, the towns (which, be it remembered, remained rural communities, making up the whole area of the State) held their ground and are to this day the true units of political life in New England, the solid foundation of that well-compacted structure of self-government which European philosophers have admired and the new States of the West have sought to reproduce. Till 1821 the towns were the only political corporate bodies in Massachusetts, and till 1857 they formed, as they still form in Connecticut, the

¹ *Op. cit.*, Part II., Chap. I.

² *Ibid.*, note to p. 596.

basis of representation in her Assembly, each town, however small, returning at least one member.¹

As has been said, this state of things continued till 1850 without any real need of government on the part of the State. The machinery of the town government is very simple and yet extremely interesting, because it presents a sharp line of division from every other form of government in the country. According to the Public Statutes of 1882 there are to be chosen at each annual town meeting by all the inhabitants from among themselves, —

A town clerk.

Three, five, seven, or nine selectmen.

Three or more assessors, and, if the town deems it expedient, three or more assistant assessors.

Three or more overseers of the poor.

A town treasurer.

One or more surveyors of highways.

Constables, who shall be collectors of taxes unless other persons are specially chosen collectors.

Field drivers.

Two or more fence viewers, and

All other town officers.

The warrant issued by the selectmen shall express the time and place of the town meeting and the subjects to be then acted upon. The selectmen shall insert therein all subjects which may in writing be requested of them by any ten or more voters of the town, and nothing acted upon shall have a legal operation unless the subject-matter thereof is contained in the warrant.

When the meeting assembles in the month of March the first business is to choose a presiding officer, who is known as the Moderator, and forms one of the most striking features of the town government. In Chapters VI. and XVII. has been discussed the difference between the position of the Speaker of the English House of Commons, and that of the Speaker in our Houses of Representatives, whether in Washington or in the State. It was argued that the former exercises the function of a pure presiding officer,

¹ *Op. cit.*, Chap. XLVIII.

guiding the course of business, enforcing the rules of the House, and protecting the rights of the minority, even of individuals, against the chronic tendency of the majority to oppression ; and this with an impartiality amounting to indifference as to what may be the nature of the business in hand, or what party may be in the ascendency: while our Speaker, on the other hand, is a political partisan, elected by a party majority for party purposes, making up to suit that majority the committees which largely control legislation, using his power in the guidance of business to forward that which the majority favors, and is thus under a constant temptation to browbeat and suppress the minority of the opposite party ; and that this situation unfits him for the important, indeed indispensable, function of a presiding officer. Now the Moderator of a New England town meeting is the only public officer in the country who corresponds to this attitude of the English Speaker, as any one may readily convince himself who will attend such a meeting on a spring afternoon. There are no committees to be made up. There are no parties to dispute the supremacy. The officer selected is a townsman known for his intelligence and skill in this work, and if sometimes some small private object seeks favor by supporting him it is of slight importance and merely temporary operation. A personal inspection of his work is well worth the time and trouble of any one who wishes to study the defects of our other government methods.

In the town government, again, is the only real example of the separation of legislative and executive power. The town meeting exists only for one afternoon, or at most two or three in the year. It then dissolves and the government is handed over entirely to the executive authorities till the meeting assembles again after another year. Yet so powerful is the check of direct responsibility, the necessity for those authorities of standing up

individually in the town meeting and undergoing cross-examination, not by an investigating committee appointed for party purposes by a party majority, but by single persons, who will be listened to only so far as they are seen to be aiming at the truth, that anything like serious defalcation or intentional maladministration may be said to be practically unknown among town officials.

Equally important is what may be called the compactness of the town business. While any inhabitant can with some assistance procure the insertion of an article in the warrant, nothing can be considered which is not there, so that there is no delay in proceeding to business, and every inhabitant knows beforehand what dangers he has to prepare to meet. The selectmen are present as the authorized guides of business representing the whole town. Some person moves to take up an article of the warrant by its number. If it is a routine item it passes without question. If anybody wants information he rises to ask the selectmen, the school committee, or other official. If the answer is satisfactory to the meeting the article is passed with little debate. Only on a few questions as to which there is a strong difference of opinion or interest does important discussion arise, and even then the decision of the meeting is very likely to be guided by the opinion of the authorities. And thus under the skilful and impartial guidance of the Moderator the business is conducted rapidly to a close. The writer heard a spectator state at such a meeting that it had done more business and done it better in one afternoon than the Massachusetts legislature frequently does in a session of six months.

There are some defects of system also in the town government. 1. The executive authority is lodged in a board of selectmen instead of a mayor, governor, or president as in the rest of the country. But this is partly obviated by the personal acquaintance of the inhabitants with the

members of the board. 2. The concurrence of a number of separately elected authorities, so that there is no guarantee for uniformity or subordination in the administration. The tendency, however, is more and more to place the appointment of subordinates in the hands of the selectmen, of course on their responsibility and without confirmation by anybody. 3. The difficulty of holding a town meeting where the number of inhabitants is considerable, which is the reason, or at all events the pretext, why the growth to twelve thousand inhabitants has involved the creation in Massachusetts of thirty-three cities with more than two-thirds of the inhabitants of the State. 4. And most important of all, the financial system, which in kind if not in degree, like all those above it, has no unity and no effective control. Expenditure is made without due regard to revenue, and revenue forced up to meet expenditure. The taxing authorities are separate from the spending. Any inhabitant can propose an expenditure, and if the meeting adopts it there is nobody who has the power to protect the general interest against a sudden impulse.

Yet notwithstanding these defects, it may be safely said that the town government is the best in the country, and that for precisely the reason which forms the keynote of this book, — the effective separation of the executive and legislative power, the prevention of the absorption of executive power by the legislative body, and the confining of the latter strictly to its proper functions of enforcing responsibility upon the executive and of granting or withholding money.

It is interesting to compare the next step in the scale of government, — that of the county. Mr. Bryce has pointed out how the circumstances in the Southern States led to no town government, but to that of the county.

Population was thinly scattered; estates were large; the soil was fertile and soon enriched its owner. Thus a semi-feudal society grew up, in which authority naturally fell to the landowners, each of whom was the centre of a group of free dependants as well as the master of an increasing crowd of slaves. There were, therefore, comparatively few urban communities, and the life of the colony took a rural type. The houses of the planters lay miles from one another, and when local divisions had to be created these were made large enough to include a considerable area of territory and number of land-owning gentlemen. They were, therefore, rural divisions, counties framed on the model of English counties. Smaller circumscriptions there were, such as hundreds and parishes, but the hundreds died out, the parish ultimately became a purely ecclesiastical division, and the parish vestry was restricted to ecclesiastical functions, while the county remained the practically important unit of local administration, the unit to which the various functions of government were aggregated, and which, itself controlling minor authorities, was controlled by the State government alone. The affairs of the county were usually managed by a board of elective commissioners, and not, like those of the New England towns, by a primary assembly, and in an aristocratic society the leading planters had, of course, a predominating influence. Hence this form of local government was not only less democratic, but less stimulating and educative than that which prevailed in the New England States. Nor was the Virginian county, though so much larger than the New England town, ever as important an organism over against the State. It may almost be said, that while a New England State is a combination of towns, a Southern State is from the first an administrative as well as political whole, whose subdivisions, the counties, had never any truly independent life, but were and are mere subdivisions for the convenient despatch of judicial and financial business.¹

He then goes on to show how in the Middle and Western States a combination of the two systems grew up. For the present purpose, however, it will be sufficient to examine the organization of county government in Massachusetts. There is an annual county convention, to which delegates are chosen in the ward and primary meetings of the cities and towns. Each county chooses one commissioner to serve for three years, making three in all, one retiring each year. Each county also chooses

¹ *Op. cit.*, Chap. XLVIII.

each year two special commissioners who can be called in, in case for any reason any of the regulars is unable to serve. The county commissioners have charge of roads (so far as they have not been taken out of their hands by the Highway Commission), bridges, jails, and court-houses. The extent of their jurisdiction, however, is less important than its kind. It is perfectly irresponsible executive power in the hands of three men, wanting even the responsibility which accrues to unlimited despotism in the hands of one. Being elected by the people, they cannot be called to account by any other authority, the Supreme Court of the State having recently decided that they are not even subject to impeachment. As they never appear before any tribunal, like the town meeting or the legislature, the people really know nothing at all about them or their doings, and their election is a matter of pure party nomination. It is not surprising therefore that scandals in that department are more rife than anywhere else in the State, though the recent development of executive commissions promises a future crop equal in kind and far higher in degree. Stories are told of looseness of appropriations for county expenditure passed through the legislature, and of corresponding looseness of accounts, of which one example may suffice. The following data are taken from the report of a joint committee of six members of the house and three of the senate, in June, 1896.

In the year 1892 an Act was passed authorizing the commissioners of Norfolk County to

enlarge the Court-House in Dedham in said county, and for that purpose to borrow on the credit of the county or to raise by taxation a sum not exceeding \$75,000.

In 1894 another Act authorized the commissioners to borrow or raise by taxation a sum not exceeding \$125,000, for completion of the Dedham Court-House, in addition to the previous \$75,000.

In 1895 the legislature authorized an additional expenditure of \$100,000, and in the appropriation bills from 1892 to 1896 sums were granted for furnishing and repairs of all county buildings of \$71,000. If it is assumed that all this sum was to be applied to the Dedham Court-House, then the total amount given to the Norfolk County Commissioners was \$281,000. The evidence showed that they had expended nearly \$400,000.

And the committee find that all expenditure in excess of \$281,000 was illegal and unauthorized.

The Public Statutes require that all contracts made by the commissioners in excess of \$300 shall be duly advertised. This provision was distinctly violated. Over twenty such contracts were made, and only seven after the advertisement required by the statute. Of the total amount expended, the seven contracts received \$276,338. The balance was paid to contractors who received their awards after no public competition. Again, contracts to a very large amount were not made in writing, as the statute required.

The Public Statutes again require that all bills or evidences of county indebtedness, for which payment is ordered, shall be delivered with the order to the county treasurer; that no bills shall be paid unless accompanied by vouchers which give the items of account in detail, and unless all such vouchers confirm and sustain such bill or account; and that all bills and vouchers of county indebtedness shall be carefully filed and safely kept by the treasurer, so as to be accessible for subsequent reference.

The committee find that the provisions of the statutes from the beginning of 1892 were systematically violated. Important contracts aggregating more than \$200,000 were never filed, as required by the statutes, although the attention of the commissioners was called to their duty in this respect. The itemized vouchers which the law requires are in many cases still missing. For example, there have

been payments made to a single contractor aggregating \$22,000, for which no vouchers have been filed as required by law, and so far as the evidence shows no such vouchers have ever existed.

The committee find further that many vouchers now on the files were not placed there till after the investigation was ordered, and bear evident marks of having been tampered with since they were originally drawn.

Yet the courts decide that for such violations of law no penalty is available. The commissioners were elected by the people and cannot be touched. Is that a legitimate consequence of popular government? If we bear in mind that though the most glaring this is by no means the only case of irregularity in county affairs, we may be led to consider how dangerous it is to intrust power without a corresponding enforcement of responsibility, and that the danger is no greater, is in fact even less, in the hands of one man than in those of three, or five men, or a whole legislative body.

How long and how satisfactorily the system of town government prevailed in Massachusetts is shown by the fact that no change took place for two centuries from the landing at Plymouth, Boston having been incorporated as a city in 1822. It was a most momentous change in our political conditions, of which the consequences are after three-quarters of a century only just beginning to be felt. Perhaps the best way to discuss this subject will be to consider what a city government would be on the principles laid down in this book, and then to consider how far the practice has conformed to or departed from it. When the increasing number of inhabitants rendered the town meeting too cumbrous and unmanageable, the natural object would be to preserve its principle, and the first point would naturally be the constitution of executive power. The pattern was at hand in the President of the United States and the governor of the State. The board of selectmen answered well enough when they were

personally known to the inhabitants, but only an individual could keep alive the interest of voters who no longer came in direct contact, as in the town meeting, with the governing power. The creation of the office of mayor was not only the obvious resort, but the most thoroughly logical and practical. The next step would be to put the government of the city in his hands, as that of the town was in those of the selectmen. As the mayor was to be held responsible for the government, of course he must have the power to carry it on, and would have full power to appoint and remove subordinate officials. Moreover, there must be but one man in each place, so that the mayor could fasten responsibility upon an individual as it was to be fastened upon him, and secure the efficiency and the energy which can only be had from a single will.

Of course, a body must be established corresponding to the town meeting, but it must fill only the function of the town meeting ; that is, criticism of the executive and granting or withholding the money for public works. As the government would be necessarily removed farther from the people the enforcement of responsibility and the concentration of power must be more rigid. As the mayor is to be held responsible to the voters for the government he must not only choose his agents, but have the initiative of all plans of work, and especially of all questions of finance. The veto should be with the council and not with the mayor. If the council or its members or any of their constituent voters wanted anything done their recourse would be to urge the mayor to submit a plan, and ask for the money for doing it. If he refused the applicant would set himself to obtaining a majority vote of the council in his own favor. If the mayor still refused this would be a ground for appealing to the people, who at the next election would decide for or against the mayor on his general

administration. The finances being wholly in the hands of the mayor and his appointees, the policy of economy or extravagance, of good or bad finance, would depend entirely upon him officially and through him upon the voters who would be kept informed by public discussion in the council. Then for the first time it would be possible to say whether universal suffrage did or did not lead to bad government in Boston.

We will now consider how far the first charter of Boston, passed on the 23d of February, 1822, and accepted by the inhabitants on the 4th of March following by a vote of 2797 against 1881, conformed to these principles. The first departure was in this, that while the mayor was nominally the chief executive officer, in fact,

All the executive powers of the said corporation generally, together also with all the powers heretofore vested in the selectmen of the town of Boston, shall be and hereby are vested in the mayor and aldermen.

But the aldermen, eight in number, represent also in a measure the town meeting, and there is a confusion of powers from the start. No doubt the common council, consisting of forty-eight persons, or four from each ward, was intended more especially to represent the town meeting; but, though it might possibly have exercised control over the mayor, it had no power to do that over the aldermen, especially as the latter always sat as a separate body. The aldermen began, therefore, at once to grasp the executive power, to be exercised by their committees. For this the first necessity was to reduce the mayor to impotence, as being no more or, indeed, rather less than one of themselves, though he was still held to nominal responsibility, and thereby diverted it from the aldermen and their committees. But the aldermen were not to have it all their own way. As the common council could not hold the executive power responsible, since that was

diffused among the aldermen, the next thing was to secure a share of the executive power for themselves ; which they were well able to do, as all ordinances, all public works, and all appropriations of money and levying of taxes required their consent. So the common council at once proceeded to set up its own committees, and to enter upon a struggle with the aldermen for the exercise of executive power. And thus lobbying and log-rolling became the motive power of city government as well as of those of the State and the nation. As the executive power was thus diffused through both branches there was nobody to hold it responsible, and the main function of the town meeting at once disappeared. The only protection against unlimited jobbery was in the veto of the mayor, who thus, instead of the chief executive officer, became converted into a sort of drag upon the freaks and extravagances of the two branches of the city council.

The impotence of the mayor was further emphasized by his relation to the city officers as indicated in the charter and subsequent Acts for the first ten years. These officers were :—

A City Treasurer and Collector

Assessors

Attorney and Solicitor

Fire Department Chief and other Engineers

Resident and Consulting Physicians

City Clerk

House of Correction, 9 Overseers

House of Industry, 9 Directors

} Chosen annually in
convention of both
branches of the council,
the convention being
subsequently replaced
by concurrent vote.

It seems as if the framers of the Acts must have foreseen that all these offices would be governed by politics from the start ; that the mayor, the chief executive, would have no control over them, and that they would be filled much less with a view to successful administration than to party and personal advantage.

Other offices were to be filled as follows : —

Overseers of the Poor, 12	} Elected annually by the citizens, one in each ward.
Members of the School Committee, 12	
Warden, Clerk, and 5 Inspectors of Elections in each ward	

It will be observed that these executive officials, once elected, are not responsible to any other part of the government and disappear from the sight of the voters, while for the money they require they are dependent and dependent only upon a process of lobbying with the city council, checked only by a possible veto of the mayor.

In course of time it became evident that separate election of officials by the city council was fatal both in theory and practice, and so gradually in Boston every office came to be filled by appointment of the mayor except three street commissioners, elected one each year by the people, and twenty-four school-committee members, eight in each year, while the board of police commissioners was appointed in separate years for five years by the governor and council.

But one provision was clung to with desperate tenacity as if it was the very basis of our liberties, and that is the requirement of confirmation by a majority of the aldermen of the mayor's appointments to and removals from office. Yet it has been over and over again demonstrated both in theory and practice that such confirmation so far from being a safeguard is destructive of good government. It opens the way for dictation or bargain between the aldermen and the mayor and relieves both sides from responsibility. The mayor can say, "I was obliged to make nominations, not such as I wanted, but such as the aldermen would accept," while the aldermen are cut off from criticising agents for the appointment of whom they are equally responsible. Thus Hon. Seth Low says :¹ —

¹ "The Problem of City Government." Reprinted from the *Civil Service Reformer*, April, 1889.

At the first, American cities were organized by giving to their legislative bodies the most ample powers. At the same time the executive of the city was made little more than a figurehead. Such appointments as it fell to the mayor to make needed confirmation at the hands of the common council, and in time the confirming body became everywhere in effect the nominating body. Or rather, even a worse result than this followed. The most important executive offices in the city were filled, not according to the best judgment of the mayor, nor yet according to the best judgment of the common council, but according to the best compromise that could be effected between these two. Meanwhile, as one result of such methods, all sense of responsibility for results was lost by both parties to the compromise, the mayor claiming that he had nominated the best officials whom the common council would confirm; and the common council claiming that they were in no respect at fault, because they could only confirm men who were nominated. Had the mayor nominated better men, they would claim, they would have been glad to confirm them.

Another fixed idea is that of intrusting executive work to boards or commissions, an arrangement apparently devised for the purpose of destroying at once efficiency and responsibility.

Hon. John T. Hoffman, in the address already quoted, says :¹—

I hold that in a scheme of city government there is, more than in any other, the need of a strong and thoroughly responsible single executive; for the same reason that when a body of men are confined within the narrow limits of a ship in mid-ocean, the government thereof must of necessity be administered by one man, prompt to make his will felt, and to whom prompt obedience must be rendered, and who knows that he alone will be held responsible for disaster.

The head of every department should be a single one—no boards or commissions—and so the responsibility to the mayor will be concentrated, as is his to the people. What we need is not a complex system, but one that is simple and direct; all through which runs one sound principle. Such is the principle of the immense business of the greatest merchants of New York—one man at the head of every branch of it, and every one of these responsible to him, the head of all.

It seems strange that men cannot see a truth so plain, to wit: that this principle which they instinctively apply to their private business

¹ See *ante*, Chap. XXII.

must be applied also in the public service, or we cannot hope for good results.

And Hon. Seth Low : —

There is, of course, a great difference in the executive power of individuals, and a poor executive will seriously affect the efficiency of a department; but he must be a singularly inefficient man who will produce worse results than the best board that ever sat. If the members of such boards were to enter upon their duties with the most single purpose possible, the nature of the work intrusted to them must very shortly produce one of two results: either the members of the board will get at loggerheads with one another, resulting in great disadvantage to the service, or the members will keep in harmony with each other by mutual concessions.

In no case does the best judgment of any one member, nor the prompt action of any one, come with the same direct efficiency, as when the full power is lodged in single hands. No army could succeed under such a system; no railroad could succeed; no business of any kind could succeed under it; and there is nothing so singular about the business of a city that good results can be hoped for in a city from methods which defy the experience of mankind.

The weakness and irresponsibility of the executive branch form, however, but one half of the picture, and that not the worst. The other is to be seen in the council, which is almost an exact repetition of Congress and the State legislature, the evil of defective organization becoming more and more manifest as we descend in the scale. There is one body of twelve and another of seventy-five persons, all precisely equal, with nobody present to represent the whole city or the executive government of the city. The mayor was originally supposed to preside over the aldermen, but the practice has long since fallen into disuse, and both bodies choose a presiding officer by majority vote. This officer makes up the committees, so far as his branch is concerned, at his absolute discretion, and these committees really hold the government of the city, notwithstanding the peremptory injunction of the charter that they shall not do so. There were in 1893 ten standing and five special com-

mittees of the aldermen, four standing and two special committees of the common council, and forty-five joint standing and thirty joint special committees, making a grand total of ninety-six. Unless otherwise ordered the two branches meet weekly, and any member is at liberty to propose action upon any subject he pleases; all such propositions being referred to the committees, which must of course have the principal deciding voice with regard to them, while the ever-present lobbying and log-rolling must be the instrument of decision.

It follows that there is no detail or condition of the city government, inside of the sphere of State legislation, which is not liable from week to week to total subversion at the hands of the shifting and irresponsible majority of the two branches of the city council and their committees, while the wider range of State legislation itself hangs almost with the uncertainty of wind and cloud in a higher stratum over the devoted city beneath. The only protection consists in the limitations of the State constitution, and the veto power of the governor and the mayor.

The effect of looseness of organization is perhaps most apparent in the management of the public schools, which is the weak point even in the town government. In Chapter XXII. have been shown the weakness and the want of responsibility in the Board of Education, resulting in a total absence of effective criticism and reliable information as to the condition of the schools throughout the State. The school system of each town and city is to a large extent an isolated unit, under the exclusive management of a committee of three or more persons separately elected. Not only the educational department, but the financial, and even the construction and repair of buildings, are left to them. Their responsibility may be said to be mainly to the children, who, through their parents the electors, have more control over them than

anybody else, and who thus hold a rod over the teachers. The estimates of the school committee are almost obligatory, as there is really nobody from whom the town meeting or the city council can extract any reliable information, the restriction consisting only in the veto of the mayor. In Boston the committee consists of twenty-four members chosen for three years, that is eight each year, on general ticket and without pay. There is no authority inside or outside of themselves to which they are called upon to listen. They work by committees and by majority and minority, with the inevitable log-rolling and lobbying, with the regular inability to win any personal reputation or to accomplish any satisfactory individual work, and with the usual consciousness of incurring a share of blame for the shortcomings of others. To such a body is committed without check or control the annual expenditure of two millions and a half of dollars, say one-fifth part of the revenue from taxation. The absolute necessity for concentrated executive authority has led of late years to the establishment of school superintendents in the towns and cities; but they are still appointed by the school committee, that is, by a majority vote, have no appeal except to the majority, are subject to its caprices, and have to proceed with exceeding caution, lest their juvenile masters in the schools shall through their parents bring influence to bear upon the committee. In the absence of definite information the conclusion seems justified that as an administrative agency the school superintendent has thus far accomplished but little.

The evil consequences are most sharply apparent, as always, in the finances. According to Section 8 of the Boston Charter Amendment of 1885 :—

The heads of departments and all other officers and boards having authority to expend money shall annually furnish an estimate to the mayor of the money required for their respective departments and

offices during the next financial year. The mayor shall examine such estimates and submit the same with his recommendations thereon to the city council,

which, of course, is to be done in writing, as the mayor is not a member of the board of aldermen, and is therefore not expected to be present at their meetings. All the officers and boards herein referred to, though nominated by the mayor, hold their places through confirmation by the aldermen, and though they may be nominally removed by the mayor, yet as the officer removed holds his place till his successor is confirmed by the aldermen, this power amounts to but little. There is nothing to prevent any or all of them from asking for the largest sum they can possibly spend, and they may do so in perfect good faith. It is not uncommon for a department to have a part of its appropriation left over at the end of the year.

The estimates thus submitted are referred to the committees of the two branches of the council, which are at liberty to modify them and to add or subtract at their pleasure within the limit of taxation and debt allowed by State law. Moreover, either branch, on a report of its committees, can propose additional expenditure for any purpose at any time during the year, the only restriction being that provision for its payment must be made either out of the tax levy already ordered or by an order for borrowing. The absence of any effective check upon the executive is no less important. A mayor, or even a head of department, sufficiently skilled in lobbying, may, even without corrupt motives, involve the city in schemes of extravagant or unwise expenditure without the voters having any knowledge of the merits of the case, or being able to fix the responsibility.

The estimates as finally concocted having passed the council are laid before the mayor. It was thought a wonderful advance in the amended charter of 1885 that the

mayor was given power to veto items of appropriation bills, instead of being obliged to accept or reject the whole. Doubtless some improvement was effected, but it was trifling compared with the evil of the whole system.

Since 1885 it has been the practice for the mayor to cut down the department estimates, and for the council to accept the reduction, but the principle upon which this has been done will appear from a message of Mayor Matthews in 1892.

It is wholly misleading, however, to consider the estimates sent in by the mayor as having been deliberately and voluntarily "cut down" from the amounts required or requested by the several departments. Ever since the enactment of the law of 1885, limiting the rate of taxation, the departments have always asked for more than they knew could be appropriated under the provisions of that law; while on the other hand the mayor has always recommended, and the city council has always voted, the full amount possible to be appropriated thereunder. The function of the mayor has, since the passage of the Act of 1885, been simply to distribute the total possible appropriation among the several departments, and he has never attempted to cut down the appropriations below the maximum amount.

In other words, the department expenditure is limited by an arbitrary total imposed from the outside, and not by any public discussion as to whether the taxpayers get full value for their money.¹

The amount of expenditure having been determined upon, then for the first time the question of revenue is taken into account. As the objects and methods of taxation are determined by the State legislature, all that the

¹ It is an interesting consequence of the action of the legislature that, while the city is compelled to meet the requirements of the Police Commission appointed by the State, and at the same time the rate of taxation is limited by the State, that commission may easily absorb a wholly disproportionate part of the city revenues. In fact, the whole proportion of department expenditure, as well as its application within each department, may be readily assumed to depend much less upon considerations of the general welfare than upon political influence.

city council can do is to order the raising of the required amount in a lump sum, and the order is handed over to the assessors, who have to adjust in accordance the valuation of property and the rate of taxation. When these are leaned upon too heavily there is a ready alternative in the incurring of debt, of which only the interest and perhaps a small sinking fund are felt in the annual burden. For a long time this resource was left wholly at the discretion of the city governments, but the growing alarm and outcry at the magnitude of debt led to the passage of an Act by the legislature in 1875, with subsequent modifications, limiting the amount of indebtedness which could be incurred by a city to a certain percentage of the assessed valuation. The effect of this was that those cities which had not reached this limit at once set themselves to work to reach it by fresh expenditure, and after that, when any further outlay was needed, either to raise arbitrarily the valuation upon which the percentage of debt was to be based or to apply to the legislature for exemption from the limit in this particular case. To crown all, the legislature has itself within a few years provided for the expenditure of something like forty millions of dollars to be assessed upon the cities and towns regardless of the debt limit. The following table from the *New York Commercial and Financial Chronicle*, for April, 1897,¹ gives the aggregate net debt of the cities of Massachusetts for several years back, together with the taxable valuation and the percentage of debt to valuation.

¹ State and City Supplement.

YEAR.	VALUATION.	NET DEBT.	PERCENTAGE.
1896	\$2,622,520,278	\$104,702,875	3.9
1895	2,542,348,993	98,511,920	3.8
1894	2,471,521,505	87,786,918	3.5
1893	2,428,339,029	80,125,652	3.2
1892	2,333,125,090	76,483,323	3.2
1891	2,245,042,273	73,066,660	3.2
1890	2,154,134,626	70,742,786	3.2
1885	1,782,349,143	63,306,213	3.5
1880	1,584,756,802	68,512,929	4.3
1875	1,840,792,728	71,784,006	3.8
1871	1,497,351,686	39,421,298	2.6

As the valuation can be arbitrarily increased, the percentages do not necessarily tell the full story of increased relative liability. The current interest charge was \$5,831,900 for the Massachusetts cities in 1896, which sum was raised by taxation. This is an amount nearly equalling the net cost of maintaining the State government only a few years ago.

Nowhere in our government do the defects of organization tell more heavily upon the quality of men brought into office than in the cities. The large sums of money and the infinite details of administration involved, the compact masses of population, the variety of interests, the extremes of wealth and poverty, and the friction between classes, — all make city government more important to the people than that of the State, as the State is than the national. And this is so much the more true, that whereas between the powers of the State and national governments there is a comparatively sharp line of division, those of the State and the city are blended in an inextricable complication, the portion of the city being in fact so much as the State is inclined, or can be induced,

to part with, and being subject to resumption at any time. The executive power in the city being divided up between the mayor and two bodies which at the same time hold the legislative power, and the whole being operated by committees for legislative and largely by boards and commissions for executive work, there is no personality and no responsibility anywhere. It follows from this, that no matter how hard and disinterestedly any man may work for the public service, he can never get any credit, because the work is nominally done by an impersonal body ; whereas if there is any apparent dishonesty or incapacity or negligence, no member can escape suspicion, however carefully he may avoid giving any ground for it. The result is that there is a taint connected with the very name of city office.

The moment a man becomes a member either of the aldermen or the common council, a distinct flavor of loss of caste attaches to him. Men of inferior ability or character seek the places because their shortcomings will be divided with others, while men of higher quality avoid them for precisely the same reason. Hundreds of young men of wealth, education, and leisure would be glad to devote themselves to the public service, but they will not engage in work where there is no reputation to be won and where it is almost certain to be lost. To the people the whole business is a game of bargain and intrigue, which they do not understand, and regard with disgust. In their voting they are and can be guided only by nominating conventions or caucuses of Republicans or Democrats, names of which the mere introduction into city politics is so absurd that the self-respecting citizen feels ashamed when he votes upon them. To charge the evils of such a system upon universal suffrage is about as reasonable as it would be to condemn steam as a motive force on account of frequent explosions and loss

of life through a defective system of construction of boilers.

It may be said that the system itself is the result of democracy. The man whose name is chiefly identified with the Boston charter of 1822 was Chief Justice Shaw, the one who took a leading part in that of 1885 was Hon. Benjamin R. Curtis, two names which are perhaps unsurpassed in the history of the State for legal learning and professional standing. It is often sneeringly said that a government cannot be any better than the people. The fact is that we have never had a government half as good as the people, who are constantly striving to maintain its character against overwhelming difficulties. To quote Mr. Bryce again : —

What the legislatures of the worst States [or cities] show is not merely the need for the existence of a sound public opinion, for such a public opinion exists, but the need for methods by which it can be brought into efficient action upon representatives who, if they are left to themselves, and are not individually persons with a sense of honor and a character to lose, will be at least as bad in public life as they would be in private.¹

There is effort and power enough constantly wasted here to work out the best city government in the world, if only they could be applied through suitable machinery.

In the thirty-three cities which have grown up in Massachusetts during the three-quarters of a century since 1822 the charters have all been made up by ringing changes on that first adopted by Boston. Of course if we had a State government worthy of the name we should have had a general municipal law, worked out through constant study and experiment carefully conducted. But as we have seen, the legislature is quite otherwise employed. Whenever a town has reached the required twelve thousand inhabitants, a committee is either chosen

¹ "American Commonwealth," Part II., Chap. XLV.

or chooses itself to frame a charter. The members, having naturally a limited acquaintance with the history or principles of government, procure the charters of existing cities and extract from these such expedients as strike them favorably, never proceeding upon any general principle except one; namely, that on no account must one man be allowed to exercise any independent power, but that this must be hedged about and checked in every possible way. That enforcement of responsibility is thereby rendered impossible is an idea which has never yet made its appearance in any charter. In fact, the enforcement of responsibility seems to be regarded as quite unnecessary if only power is intrusted to three or more men instead of one.

The legislature is so completely indifferent upon the subject that it will approve almost any charter, practically upon three conditions: 1. That it is recommended by a committee of citizens without serious opposition. 2. That it does not depart too far from received ideas, though the legislative forbearance in this direction has not been very greatly tried. 3. That it shall be submitted to a popular vote of the townspeople. This last condition forms an instance of what will be discussed under the so-called "referendum," the way in which we ask the people to decide questions which they cannot possibly understand and are neither fitted nor desirous to decide, while we carefully withhold from them those upon which their judgment is comparatively prompt and sure, and of great value.

It is doubtful whether one voter in ten knows wherein the city differs from the town government. They know that the town meeting has become too cumbrous for practical work; that the change is recommended not only by their own committee but by an Act of the legislature and the precedent of other towns. They are allured by the greater advantages offered by a city in schools, water sup-

ply, streets, fire and police protection, etc., urged upon them often by men who expect personal advantage from the change. It is only when they find in practice the rapid advance of taxation and debt, the multiplication of offices and salaries, that their dissatisfaction finds expression both loud and deep.

If there is one city in the State which is satisfied with its government it has failed to make it known. What relief they obtain from the legislature we have seen to consist in taking their affairs out of the control of the inhabitants and handing them over in detail to commissions, neither chosen by nor responsible to the inhabitants, or indeed to anybody. The one thing which might render this course endurable would be that the government of the State should be better in principle than that of the city. But inasmuch as it is distinctly worse, though in practice not so directly or severely felt, this source of consolation is wanting. And thus it is that men's minds are sinking into the indifference of despair, with jealousy, distrust, and suspicion, promising seeds of a harvest of class hatred.

To obviate some of the difficulties which presented themselves in the government of Boston, was passed the Act of 1885 already alluded to, which placed the police power in the hands of three commissioners appointed by the governor with the consent of the council, but wholly independent either of the people or the authorities of the city. One instance may be given of the total want of responsibility or of effective control of these men, and the absence of any test of individual character which the public can see.

In the year 1891 the mayor of Boston sent to the legislature a list of grave charges of abuse of official power on the part of one of the commissioners. The principal one was that he took part in the contest for a sword to be

awarded for votes. To appreciate the situation it should be understood that the mayor of Boston and the governor of the State were Democrats, the accused commissioner was a Republican, the legislature was Republican by a large majority, and the council consisted of eight Republicans to one Democrat. To show something of the feeling in the city the following extract is given from a newspaper, independent in politics : —

The sword contest with its attendant scandal will be readily recalled. In direct violation of the rules of the department Mr. — went into competition with other Grand Army men for this bauble, and his partisans scoured the bar-rooms, the police-stations, the houses of ill-repute, the gambling-dens, policy-shops, and pool-rooms to raise money for the purchase of coupons intended to prove that he was the most popular member of the great veteran organization.

Inquiry among members made it clear that the legislature would decline either by itself or its committees to have anything to do with the matter, and it came before the governor's council. The governor, in view of his relation to the council, declined to be present, and the trial was presided over by the lieutenant-governor. In court trials the proceedings are conducted by trained judges under strict rules of evidence to keep it within bounds. The members of the council had little or no legal experience, and the evidence wandered pretty much at the will of counsel and witnesses. The council on February 25, by a vote of seven Republicans to one Democrat, the lieutenant-governor presiding, refused to pass an order applying to the legislature for authority to compel the attendance of witnesses. They did not want any evidence against the police system imposed upon Boston by their own party, especially as any failure of the system would cast reproach upon the State government which established it.

No fair-minded man can read the evidence in that trial

without a conviction that the commissioner was unfit to hold a place which called for unstained reputation and honor. Yet in a report to the governor on the 11th of March, signed by eight Republicans against one Democrat, the council said : —

It does not appear that Mr. — has been guilty of any official misconduct, or misconduct of any character affecting his fitness for his office, and nothing whatever has been shown, or even attempted to be shown, which can injuriously affect his private character.

On the 18th of March Governor Russell sent a message to the council removing Mr. —, and appointing another person, and said : —

Such a change cannot but improve police discipline and restore public confidence in the administration of a board which has enormous power through its absolute control, not only of the police but of the saloons of Boston, and therefore is under great responsibility to the public for the proper exercise of that power.

But the council adhered to its decision and refused to permit the change. It appears, therefore, that the police commission of Boston is not only completely independent of the people and the authorities of Boston, but is beyond reach of the governor, depending only upon a vote of a party majority in the council, a body which is in no way responsible for either the legislation or the administration of either State or city.

But signs of better things are not wanting. For the thirty years succeeding 1850 any suggestion that the failures of city government were owing to faults of organization were received with pitying contempt. The difficulty was in universal suffrage. If the poor and ignorant in superior numbers could vote away the property of the rich, if the multitude, moved by envy and hatred, could fill the offices with their creatures, how could anything but disaster result? The only hope was in the education of the people, while press and pulpit resounded with fran-

tic appeals to the voters to attend the primaries and the caucuses and to put good men into office. It was in vain to urge that this was to pronounce final sentence of condemnation upon our institutions, since with the increase of foreign immigration, the sharper struggle for life and the greater social inequality, it was almost certain that the people would never be any better than they are now, at least under present political conditions; that their apathy, neglect of the primary meetings, and surrender to political managers were increasing rather than the reverse; that the faults of organization were abundantly sufficient to account for any amount of evil without giving up our faith in the power and quality of the popular will; and that if it could be shown that defective organization was primarily responsible, it left room for any amount of hopefulness and stimulus to effort in the future.

Within ten years, however, a marked change has taken place. Gradually, if slowly, the conviction has been spreading that the root of the trouble is to be sought in methods of government; that the mass of the people really do want order, economy, and good government; and that the main problem is how to bring their will to bear. Reform clubs, municipal leagues, and citizens' associations are forming on all sides. Every college has its chair of political science, a thing practically unknown twenty-five years ago, while the literature of the subject is multiplying to an immense extent. Even in the stronghold of the old system, the schools, the attack has begun. Whereas a few years since the subjects of discussion at educational meetings were confined to what both scholars and teachers should be taught, they have begun now to turn upon administrative measures, the spirit of inquiry going so far as actually to question the efficiency and the adequacy of the time-honored school committee. At least one-third of the cities in Massachusetts alone are at work in trying

to improve their charters. It may appear sanguine to predict that with the intelligence, the quickness and the fearlessness in experiment of our people, and the material advantage as well as reputation to be gained by success, the day is not far distant when we shall solve the problem and show cities as well governed as any in the world.

It must be said, however, that the main element has not been touched; that it has not as yet been seen that the reform of city government must be preceded by that of the State; that the intervention of the State government for good instead of evil is an indispensable requisite, of which a further consideration of the history of the subject will furnish ample proof.

CHAPTER XXV

CITY GOVERNMENT (*Continued*)

IN examining the progress which has been made in the study and practice of municipal government, it may be well to notice at the outset the increased attention which has been given to foreign methods and development. Among the most comprehensive works upon the subject are those of Mr. Albert Shaw.¹

His thorough analysis is perhaps not the less valuable that he has no pronounced political theory, being indeed more interested, or at least more given to detail, as to results than as to the organization by which they are obtained. As regards the Continent of Europe, the conclusion forced upon the impartial student is that the conditions, both as to the intervention of the central government and as to the exercise of the suffrage, are such that, with the single exception of France, the comparison is of very little use to this country; that we cannot adopt them if we would, and that we shall have to work out the problem in our own and a very different way.

None the less interesting is Mr. Shaw's tribute to the influence of the popular element.

The distinctively modern city had its birth in the French Revolution, and Paris has ever since then stood as its preëminent type. To French influence several European countries owe the administrative framework of their municipal governments, while every European

¹ "Municipal Government in Continental Europe" and "Municipal Government in Great Britain."

capital has been more or less completely made over in its external form upon Parisian models (p. 1). It is something to remember that all countries are under permanent obligations to the clear political philosophy that furnished the French Revolution with its principles, while most countries are not less indebted to modern France for lessons in the science and art of public administration (p. 3).¹

France being the one country in Europe which approaches nearest to the United States in political equality and the absence of class influence, it is important for us to examine closely her methods of city government. And first of all we find in Paris that the whole executive authority is in the hands of the prefect of the Seine and the prefect of police, and under them in twenty *maires* of *arrondissements* and their subordinates, the whole being agents of the general government and appointed by the Minister of the Interior. Here is the principle which we have so strongly insisted upon, — concentrated authority in a single head, working by single agents in every department, and all appointed by or from the single head. It is the ideal system as regards efficiency, the only question being as to the centre of responsibility. France being a centralized government, and the seat of that centralized, and of necessity very strong, government being in Paris, the agents of that government are the natural governors of the city. But the principle of our State governments being the reverse of centralized, and they being besides extremely weak, the parallel does not hold at all. If the mayors of our cities held the powers of the prefect of the Seine and the prefect of police combined, and were then held responsible to the freest, most fully informed and directly acting local public opinion, combined with a corresponding organization in the State, then we should have the principle of popular self-government, which we are very far from having now, and then

¹ "Municipal Government in Continental Europe."

we should be entitled for the first time to pronounce whether it was or was not a failure.

The municipal council of Paris consists of eighty members, four from each of the twenty *arrondissements*. Each *arrondissement* is subdivided into four quarters, and each quarter elects a municipal councillor. They are elected for three years and all retire together (p. 16).

Certainly the government of Paris at first sight seems to divide responsibilities in a manner likely to produce constant friction, and to interfere most distractedly with the accomplishment of large plans requiring harmony and foresight. The municipal council, elected by the votes of all the citizens of the eighty quarters, meets in its sumptuous hall of the Hôtel de Ville almost every day to debate all points of municipal policy and outlay. In its hands rests the all-essential power to vote supplies or to withhold them. Its eight or ten large standing committees are at pains to acquaint themselves with all the departments of practical municipal activity.

But this municipal council has no immediate authority over the administrative machine. The prefect of the department of the Seine, who owes his appointment to the general government, and whose immediate superior is the Minister of the Interior, is in fact the mayor of Paris, with complete executive authority; that is to say, his authority is complete within the sphere assigned to him, and is incomplete only to the extent of those municipal tasks the management of which has been confided by law to the prefect of police.

The municipal council elects its own president, and has its own interior organization for its work. The two prefects have the right of the floor in all meetings of the municipal council, and may always demand a hearing. They may also bring with them their important assistants and heads of working departments. The prefects, with the aid of their bureaucracy of subordinate executive officials, make up the provisional budgets and assist in the discussion of all financial questions in the sessions of the municipal councils. As regards parts of the budgets, including the police estimates, the law requires that the council vote the sums asked (p. 28).¹

It seems to us, on the contrary, the ideal simplicity of municipal government, that perfect separation of legislative and executive power which we in this country are always talking about but never put in practice, according to which the council has every power of suggestion and

¹ *Op. cit.*

criticism and a certain, though perhaps too limited, control of the purse, but with no power at all of interference with executive administration. The only point in which this differs from the real principle of our institutions is in the origin of the executive power, which in Paris proceeds from the national, or as we should say the State, executive, but in our case from the local popular vote. It is owing to this organization that the government of Paris escapes the distraction and anarchy which we have seen in that of the nation. Note, further, that the relative organization of local and national government in England and France is largely reversed.¹ Even as it is, the Paris council undoubtedly acts at once as a stimulus and a check upon the prefect of the Seine. The importance of the subject justifies a lengthened quotation from Mr. Shaw.

No one can deny the palpable fact that the municipal council of Paris is a radical rather than a conservative body, and that, while possessing a good average of intelligence and personal character, its tendency is toward doctrinaire innovations. . . .

Over against this rather strenuous and high-keyed chamber of eighty councillors, — who certainly have much less of *bourgeois* caution and of instinctive respect for the large taxpayers than corresponding municipal councils in England and Germany, — the observer finds a great administrative organization completely in the hands of a government prefect, supplemented by a colleague of like rank who exercises police jurisdiction. When, as a foreign inquirer, I have sought to learn whether the prefect or the council really dominated Paris, I have found much conflict of opinion. The majority of the municipal council themselves, together with a host of advanced Parisian radicals and the growing army of socialists, declare that the prefect is dominant, and that Paris is thereby deprived of its appropriate measure of municipal self-rule.

They demand an organization like that of any other French city, whereby the mayor and the executive government may be evolved out of the bosom of the popularly chosen municipal council. On the other hand, the prefects themselves and the great majority of those citizens who call themselves conservative and moderate in their politi-

¹ See *post*, the discussion of the London County Council.

cal views, declare that through its hold upon the purse-strings the municipal council exercises a sufficiently dominating local control over administration, and that the constant presence of the prefect on the floor of the municipal chamber, where he is subjected to the full moral influence of every debate, brings him into such intimate and vital relationship with the representatives of the citizens that the average result is not discordant.

But the most essential factor in the municipal life of Paris is not the prefect who wields the executive authority, or the municipal council with its power to control policies and to pass upon the details of a minutely analyzed financial budget. There can be no comprehension, however faint, of the government of Paris which does not take into account the superb permanent organization of the civil-service machine. It is to this *tertium quid* that one must look if he would discover the real unity and continuity of the administrative work of the Paris municipality. Prefects may come and go, ministries may change with the seasons, and municipal councils may debate and harangue until they make the doings at the Hôtel de Ville a byword for futile and noisy discussion. But the splendid administrative machine moves steadily on. . . . This wonderful machine, which includes policemen, firemen, school-teachers, street-cleaners, book-keepers, civil engineers, architects, and even artists, is altogether out of politics. France might to-morrow accept the sway of a military dictator; but this need not involve a single change in the personnel of the tens of thousands of men who make up the administrative organization of Paris, with the bare exception of the two prefects.

On the other hand, the most extreme of the Parisian socialists and communists might have their way, and the result would be a single mayor elected by the municipal council to replace the two prefects. But otherwise there would be no occasion for any changes in the administrative machine, except by way of enlargement on account of the increased range of direct municipal undertakings which would soon follow the triumph of the radical contingent.¹

The reason for the excellence and permanence of the civil service is that it is subject to the executive alone, which has a direct interest in and responsibility for these qualities. There is an exquisite simplicity in these words, "no occasion for any changes." That may be, but none the less the changes would very speedily take place.²

¹ *Op. cit.*, pp. 23, 25, 27, 28.

² Compare what is said (Chap. XV.) in the quotation from M. Lamy as to the encroachments of the spoils system in the national civil service.

If the prefect of the Seine were like the mayor of our cities, a single head elected by the mass of voters instead of appointed by the central government, the executive would be just as separate from the legislature as it is now, while the function of the council would be to keep those voters informed what sort of a mayor they had chosen, and whether they wish to reëlect him or not. It cannot be too often repeated that while public opinion might still fail in its work, then only could the charge be fairly made that it had proved itself to be incompetent.

But no such alternative presents itself to Mr. Shaw, who considers only the proposal to have a mayor elected by the council, not seeing that the council would at once select the mayor, and through him the administrative organization, not with a view to the government of the city, but to the political intrigues of its members.

The municipal council certainly contains a number of able and honest men ; but as a whole it is open to the charge of being a body of men mediocre and unknown, and the primary reason for this is plain enough.¹

Mr. Shaw thinks that this is because each member is elected in a separate district, eighty in all ; and though it is not legally required that the councillor should be a resident of the quarter he represents, he is in practice likely to be so. He thinks that the remedy for this would be an election at large by general ticket, and in giving the council somewhat more of control of executive administration. The arguments against the first point will be presented later, and the second would involve that which we have tried to show is the great evil of all government in the United States, — the interference with and encroachment upon by the legislature and the diffusion of executive power, and the consequent failure of responsibility.

¹ *Op. cit.*, p. 20.

I would not have it inferred that the council of Paris is not a more intelligent and efficient body of men than the average council or aldermanic board of a large American city.¹

The explanation of which is that they are limited to their proper function of criticism, and not committed to intrigue and to responsibility for the deeds of others. The real reason why they are not still stronger men we take to be that there is no opportunity of winning personal reputation. If the prefect was elected by the people, members of the council by their watchfulness and criticism would commend themselves to public opinion and would have the prize of executive office always before them; while the appointments now radiate through the prefect from the Minister of the Interior, with whom they cannot expect to have any weight or influence.

One suggestion seems well worth attention.

The twenty *arrondissements* of Paris are not bounded by temporary lines, nor are they mere electoral divisions like American city wards, or units of representation like our congressional and legislative districts. They are not subject to rearrangement in order to equalize their population. Some are much more populous than others, and the municipal council, therefore, with its four members from each *arrondissement*, does not represent the population with mathematical equality. But it will be found by far more convenient to assign additional members to the more popular *arrondissements* than to recast lines in order to create districts of equal population. The *arrondissements* are designated by numbers from one up to twenty; but they are also named, and the names are suggestive of much neighborhood history and local tradition.²

One of the evils of our system is the redistricting at comparatively short intervals according to growth or change of population, involving the scandal of party gerrymandering, with the absence of local feeling or pride, many citizens not knowing or caring to which ward they belong. If the wards in our cities were per-

¹ *Op. cit.*, p. 21.

² *Op. cit.*, p. 32.

manent, and with characteristic names as in Paris, they would soon come to have a historic identity and ambition, while the representation could be easily adjusted by giving an additional member for sufficient fractions.

Another interesting suggestion is as to the charitable institutions.

The entire administration is under the authority of the prefect of the Seine and his superior, the Minister of the Interior, and is actively exercised by a single responsible director who is nominated by the prefect and appointed by the minister. But the director is guided in all important matters by the advice of a council of surveillance, which is required by law to meet as often as once every fifteen days, and which may be called together as frequently as occasion requires. In the hands of this great board of public charity rests the policy that expends a yearly revenue of perhaps thirty million francs.¹

This board is made up by an elaborate process, which would not be applicable in this country. But if the director referred to was appointed by the mayor, and the council was elected by the people with power of criticism but none of interference except appeal to the mayor or the city council, the principles of efficiency and responsibility would both be maintained. We shall have to consider this further in connection with the school committee.

As everywhere in Europe, elections are for long terms, members of the municipal council of Paris holding for three years and of other cities for four years and those of the charity board for six years. It is certainly not the way to secure the best results of popular rule, and is a principle which could not be other than disastrous in the United States, at least under present conditions.

Again, whereas in Europe almost all elected bodies are renewed by fractions, the municipal council of Paris is renewed as a whole every three years and in other cities every four years ; and this, Mr. Shaw says, seemed to the

¹ *Op. cit.*, p. 104.

majority to be in more natural accord with the genius of the French system. We shall see reasons for believing that this method is most consistent with obtaining the best results from popular government everywhere.

Outside of Paris all the communes and cities of France are regulated by the law of 1884, the members of the municipal council varying from ten to thirty-six, Lyons alone having fifty-four, as Paris has eighty. The members are elected on a general ticket or, where the larger cities are divided into sections, on a general ticket for those sections. The municipal suffrage may now be exercised by every Frenchman who has attained his majority, has lived six months in the commune, and has not lost his civil rights and privileges through the commission of a crime or other disqualifying acts. Thus universal suffrage in France means almost precisely what the same term signifies in the United States, except so far as in the latter educational requirements are concerned.

Having elected their municipal councillors, the voters have performed their one chief task. They have conferred upon a chosen body of their fellow-citizens the right to exercise all the powers which are by law reposed in the municipal organism. The council proceeds without delay to choose from its own membership the mayor and his so-called adjuncts or assistants. These are all appointed for the full term of four years. The mayor is the presiding officer of the council and the executive head of the municipality. His range of duties is wide and responsible. He assigns various administrative tasks to his adjuncts. . . . The council itself also appoints a number of standing committees for the consideration of important subjects, or the general oversight of particular departments. All these committees have the mayor as nominal chairman, although the actual duties of the chairmanship are usually performed by one of the adjuncts, who is assigned to act in the mayor's stead.

In England the council, on the recommendation of the standing committees, makes all appointments of municipal officers and employees, while in France the mayor exercises the entire appointing power, except as regards certain offices which the law specifically requires to be filled in some other way. The British mayor is merely the presiding officer of the council, holding his place for only one year,

and possessing no administrative authority or power of appointment. In the French, as in some American municipalities, the mayor is the executive head, with powers and duties which would seem to give him almost the position of a dictator. The sharp distinction, however, between the French and American systems lies in the fact that the French mayor is not only a member of the council and the council's presiding officer, but that he and his adjuncts owe their appointments entirely to their fellow-councillors.¹

In the United States, though the mayor is elected by the people, the council in practice holds his power through confirmation of his appointments and the initiative in finance. In France the same result is obtained by the election of the mayor by the council. Though this result has not been fully worked out, Mr. Shaw sees it impending :—

If I am not mistaken in the tendency of things, as the system actually acts in France, the real influence of the council is increasing at the expense of that of the mayor. It could not well be otherwise where the council is composed of active and intelligent men. The standing committees must inevitably grow in influence, and the adjuncts in the course of time must, it would seem to me, find themselves in very much the same position as the chairman of the chief committees of an English council. The mayor, under the French system, will doubtless long continue to be intrusted with the general oversight and control of the executive work of the commune; but I am not disposed to believe that he will always hold so dominant a place as the law of 1884 seems to contemplate. Experience will soon begin to show how far the French councils, without any changes in the law, will be able to make the mayor practically their obedient servant in the performance of his executive function.²

As the mayor and the adjuncts, as well as the council, are chosen for four years, the force of popular control is very limited, and still more so by the fact that both mayor and council are in a great degree under restraint by the prefect, and through him by the central government. It cannot be called what is known as local self-government in the United States. Still it approaches more nearly to

¹ *Op. cit.*, pp. 173-175.

² *Op. cit.*, p. 175.

it than any other in Europe, which may furnish grounds for Mr. Shaw's remark : —

If I were to venture upon a dangerous comparison, I should be disposed, after asking that due allowance be made for numerous exceptions, to entertain the view that in the present decade the French councils have been less substantial and responsible bodies than those of the large English and German towns, while far superior in these qualities to those of American cities of corresponding size.¹

In Belgium, up to 1893, the property qualification for voters limited the proportion to one in thirteen of the adult males, or one in fifty of the population. Even the law of 1895 disfranchises in municipal elections every man under thirty, requires three years' residence, gives a second vote to married men above thirty-five and paying from five to fifteen francs taxes as householders, and a third vote to those who derive a revenue of at least a hundred and fifty francs from real estate. These things "give assured control of municipal affairs to the well-to-do classes." If we add that the council is chosen for six years, renewable in fractions, and that the mayor for an indefinite term and his assistants for six years are appointed by the general government from the members of the council, it is evident that the conditions are too different from anything in the United States to make comparisons of any value. The same may be said of the Dutch system, with its electors limited up to 1887 to three in one hundred inhabitants and since to one in fifteen, its council chosen for six years, and its mayor or burgomaster appointed by the sovereign for the same term.

The Italian cities are governed under the general law of 1889, which is too recent for predictions of its ultimate working. The voters include practically every male citizen twenty-one years old who can read and write; but as fully fifty per cent. of the males of voting age are illiterate, the

¹ *Op. cit.*, p. 180.

electors are still only one person in eleven or twelve. The municipal council ranges from fifteen persons in communes of less than three thousand inhabitants to eighty in cities having more than two hundred and fifty thousand. They are elected one-fifth each year for five years upon general ticket, a provision which distinctly encourages class manipulation against the popular will. The council elects a *giunta* or committee of from two to ten persons for two years, and a sindaco or mayor for three years; the last two authorities holding the real executive power. The council seems to fill somewhat the function of the New England town meeting; that is, a criticising instead of a legislative body grasping at executive power. What is said of Milan, however, is typical of the real difference between all European city governments and those of the United States.

It is pleasant to be assured that in all the vigorous activities which mark the municipal government of Milan the foremost citizens take the leading part. The *giunta* is composed of men of the best qualifications, who, as a rule, possess wealth, and are glad to devote themselves to the affairs of the community. In a word, the aristocratic element is in executive control. The council contains its more popular elements, but is representative of the best classes in the town. It has its sprinkling of active business men, lawyers, architects, and engineers, but, taking municipal government as a whole, it seems to be chiefly in the hands of the "old families," and it certainly commands the best talent that the city affords. Reëlection of councillors is quite usual, and the yearly municipal election, at which sixteen of the eighty council seats are filled, is seldom attended with much excitement. Thus, in the election of 1892, the number of voters registered on the municipal electoral rolls being 44,594, there were only 14,177 votes actually cast, and this would appear to be an average election.¹

It will readily be understood that there is not much affinity between German methods of administration and those in this country. Admirers of Prussian rule can have but little to hope for here, and however much the

¹ *Op. cit.*, pp. 205, 206.

French Revolution may have modified practice there has been no definite break since the time of Frederick II. The three-class voting system of Berlin is sufficient to eliminate popular control, while the six-year term of the municipal council is more than sufficient to extinguish popular interest.

It would not have been possible in the Germany of Stein and of Frederick William III. to establish representative institutions upon a basis of popular equality. The Prussian system emphasized the property qualification, and that system remains to-day.

The voters are those who pay certain kinds of taxes above the minimum amount, and this restriction excludes perhaps ten or fifteen per cent. of the men of voting age. So far as the voters are concerned their one task is the selection of a good municipal council. Everything in the life of the *gemeinde* revolves about this one central body. It finds the burgomaster, designates his expert associates of the magisterial coterie, supplies the means for carrying on the city government, and represents in its own enlightenment, ability, and aspirations the standard and the character of the community's progress.

Stability in the German municipal councils is secured by partial renewal. Thus the councillors of Berlin and the Prussian cities are elected for six years, and one-third of the seats are vacated and re-filled every two years. Taking the German cities in general, the most usual period for which councillors are elected is six years, with the plan of renewal in three instalments.¹

The organization of other German cities differs only in detail from that of Berlin. It is perfectly evident that no city council in the United States does or will resemble anything of the kind here described.

While the working of popular government in France is much more like that in the United States, it is natural that we should turn in preference to Great Britain for a comparison.

At first sight it may seem strange that while any appeal to the example of the English national government is received in this country with jealousy and contempt as un-American, contrary to our institutions, and a servile

¹ *Op. cit.*, pp. 307, 308, 309.

attempt to copy our ancient enemy, the study of her municipal government should be received with favor and attention. But the explanation is not far to seek, in that they are exactly opposite in principle. The national government is, perhaps, the most marked instance in the world of strong executive power combined with responsibility to public opinion. The position of the Cabinet is such as to bring forward personality and to appeal strongly to the popular enthusiasm for individuals. The House of Commons is merely a body of critics with the power of the purse. It exercises no power through standing committees. It has no appointing power whatever with regard to subordinates or department officials. All it can do is to inform the people how their government is carried on by the men who are intrusted with it.

The municipal council, on the other hand, is quite out of sight of the people, who have nothing to do with it but to elect its members. There is no separation of powers, the executive and the legislative being entirely identified. The council, indeed, elects a mayor, but he is simply a presiding officer. The whole executive power is in the hands of standing committees, who appoint all the subordinate agents and are responsible only to the council except in a measure also to the national government. In the United States the aversion to and dread of concentrated executive power are so great that the cabinet system is regarded with abhorrence, while we are so accustomed to government by standing committees that good results obtained by it anywhere at once command our sympathies. Obviously there can be no more important question than which system is best, or at any rate more suited to our requirements.

Mr. Shaw says : —

In the United States the reformers have doubtless at times lost sight of the aims and objects of government in striving after good

government as an end in itself. Their attention has been devoted to the structure and mechanism, and so far as the cities are concerned, they keep changing it perpetually. They are forever overhauling, repairing, or reconstructing the House, without seeming to have many attractive or inspiring uses for which they are eager to make the House ready.¹

As well might a manufacturer be reproached with giving more attention to the machinery with which he manufactures cloth than to the quality of the cloth produced. The changes are efforts to escape from unsatisfactory conditions.

Mr. Shaw points out the evil condition of municipal government in Great Britain seventy years ago and the immense changes which have been wrought since the Act of 1835; a powerful testimony, as well there as on the Continent of Europe, to the beneficent effects of the extension of popular power; and he then proceeds to set forth the magnificent improvements which have been made in the cities. In this country it is doubtful whether local government is any better, to say the least, than it was at the beginning of the century. Of course it would not be true to say that we have made no progress, but taking the circumstances into account and the growth of population, — which is yet no greater than in Europe, — the bitter complaints which come up from some five or six hundred cities point to a failure, not in the comprehension of what needs to be done, but in the ability to do it, and the reason why is the important point. It will hardly be contended that the average population of an American city is inferior to that of a European, or that the material advantages are less appreciated, while there is certainly no less readiness to incur expense. The difficulty is in the working machinery.

The principle of municipal government in Great Britain from the Reform Act of 1835 to that which established

¹ *Op. cit.*, p. 304.

the London county council in 1888, is substantially the same. The original Act provided that common councils, varying in size according to the population, should be elected; that these councils should add to their own body by selecting a certain number of aldermen; and that this chamber of councillors and aldermen should appoint the mayor from its own number, who should act as its presiding officer. The one body of mayor, aldermen, and councillors was constituted the full municipal governing authority.

The whole substance of British municipal government is condensed in the following clause:—

“The municipal corporation of a borough shall be capable of acting by the council of the borough, and the council shall exercise all powers vested in the corporation by this Act or otherwise.”

All that the burgesses have to do is to elect the councillors, and they do the rest.¹

In the *Forum* magazine for November, 1892, Hon. Joseph Chamberlain published an article which may be summed up in one sentence:—

That the Americans pay for less efficient service in their large towns nearly five times as much as is paid in the case of a well-managed English municipality;

and this proposition is illustrated by a comparison in detail of the expenditure of Birmingham and Boston. The causes of this difference must be sought either in the character of the voters or the organization of the government. When Mr. Chamberlain observes that all the executive agents of administration are chosen for competency and retained practically for life or good behavior he merely gives a result of one or the other of the two causes mentioned.

As Mr. Chamberlain says, “We may at once dismiss the idea that the difference is to be attributed to a more

¹ “Municipal Government in Great Britain,” p. 30.

liberal franchise." He states the population of Birmingham in 1891 as 480,000, and that of Boston in 1890 as 450,000. He gives the voters in Birmingham in 1891 as 88,000 those of Boston in 1890 being 73,000. The registration of Boston in 1892 reached 87,000. Mr. Chamberlain then adds, "The suffrage is as widely extended in Birmingham as in Boston, and the small rate payers are in an immense majority, and can practically do as they like." He points out, moreover, that in English municipalities no property qualification is required for members of council. Possibly the requirement of a fixed lodging on the part of the voter, even at so low a rental as fifty dollars a year, may offer an advantage over the somewhat loose methods of registration in this country, but this last is perhaps chargeable to defective organization. Any such advantage, however, ought to be more than offset by the Massachusetts requirement of ability to read and write, if it is properly enforced, and if it is not there is again a fault of administration. Probably no American, who has had opportunities of comparison, will reject the assumption that the average of character and intelligence of the population of Boston is quite as high as in that of Birmingham.

Mr. Shaw's account, however, somewhat modifies this. He says that in practice the English municipal franchise excludes nearly all the unmarried men, all floating laborers and lodging-house sleepers, and nearly all the serving class.¹ This is an effect of the relation of the national to the municipal government, corresponding to that of the State in this country. The difference has already been pointed out, and emphasizes the fact that any effective reform in the cities must be preceded by that of the State, a circumstance which in the United States has never received any attention at all.

¹ *Op. cit.*, p. 45.

Another instance of the intervention of the national government is in the case of the budget.

Indeed, the relationship that now exists between the municipal administration and the central government at many points is advantageous rather than hampering to the local corporation. It is no hardship to make regular annual or semi-annual reports to the Local Government Board, or the Treasury, or the Home Office, touching all matters of corporate income and outgo, and the results of the administration of sanitary and other public statutes. Through the medium of the Local Government Board, — its regular publications, its permanent staff in London offices, and its expert visiting inspectors, — the officials of one town are supplied with knowledge of the doings and experiences of other towns, are deterred from harmful experiments, and are instructed in the best methods. At times it appears a needless interference with local affairs that compels a well-governed city to submit to the central authorities for inspection and approval every scheme whatsoever that necessitates the borrowing of money. If there were any lack of system in the methods by which local projects are passed upon by Westminster, or if there were any serious taint of partisanship, favoritism, or arbitrary judgment upon the processes employed, the mechanism would break down speedily, and a more complete autonomy in matters involving municipal outlay and indebtedness would have to be accorded. But the system works in the interest of justice, and its costliness in money and in time is counterbalanced by the benefits which accrue from the more thorough preliminary sifting that every scheme receives in preparation for the searching ordeal at Westminster, and from the valuable emendations which so often result from the advice that expert central officials can give.

Compare this procedure with anything which passes between State and city government in the United States.

Another fact of importance is, that as the elections for the council, in which alone the voters take part, though occurring every year, only affect one-third of the council, so that any action of the voters can have but little effect, and as the motive power of the council, aldermen, and mayor is entirely concealed from the popular view, the voters take very little interest in the elections. The result is, as Mr. Shaw points out, that contests are the exception and that thus far, at least, members of the coun-

cil are reëlected or new nominations accepted without much difficulty. Behind all this is the fact which must be patent to every visitor to Great Britain, of the distinction of classes and the subserviency of the poor to the rich, so totally different from anything which exists in this country. Moreover, as a position in the government means a great deal of hard work, with nothing to get except social distinction, the struggle is not likely to be very severe; though undoubtedly one impelling force is parliamentary ambition, as illustrated by Mr. Chamberlain himself. The caucus system is not, however, unknown. A description of it was given by Mr. W. T. Marriott in the *Nineteenth Century* for June, 1882. The chief promoter appears to have been Mr. Harris, "a justice of the peace, and a man of great ability and respected by all who knew him."

Taking as their basis of operation the sixteen wards into which the borough is divided, they formed a committee in each ward, and each of these committees elected 35 of their number to be members of a large general committee of 594. The average number in the Ward Committees is 125, and of the 35 selected 30 are members of the General Committee alone, while 5—2 of whom must be the chairman and secretary of the Ward Committee—are not only members of the General Committee, but are also members of an Executive Committee of the association, which numbers 114. The 594 of the General Committee are made up of the 35 members selected from each of the sixteen wards, with 30 members nominated by the executive and 4 *ex officio* members; while the Executive Committee of 114 is made up of the 5 members elected by each of the sixteen wards, together with 30 members selected by itself, and 4 officers of the General Committee. There is then another committee called a Management Sub-Committee, consisting of 11 members, 7 of whom are chosen by the Executive Committee from their own number of 114, and the other 4 are officers of the General Committee.

It was, and probably now is, the boast of the founders of the association that its basis was essentially popular, and that the organization was merely a machine by means of which the populace could give articulate expression to their will; and there is no doubt that the primary Ward Committee of 125 members, or thereabouts, is elected at a public meeting of all the Liberals residing in the ward who choose

to attend; but here any pretence of consulting the *vox populi Liberalis* ends. To those who are accustomed to public meetings, called together for the purpose of transacting business, this consultation of the people must appear little more than a pretence. Some few Liberals, who have a specific object in view, summon the meeting of Liberals in the district, and be the number that attend great or small, it is pretty certain that the majority are not prepared for action. The only people prepared will be those who have summoned the meeting, and they certainly will be ready with a proposal of names for the chairmanship and secretaryship of the committee, and probably also with the names of a large number of the committee. The committee once appointed, the power of the people ceases altogether, and it is filtered through the 594 members of the General Committee and the 114 members of the Executive Committee, till it solidifies in the hands of the Management Sub-Committee of 11, the 4 most powerful members of which are probably the 4 officers of the General Committee. If the president and secretary of the whole association are decently strong and able men and they work together, the chances are enormous that the whole power of this intricate organization will rest in their hands, and if the president is wealthy and ambitious as well, he will find it a most potent instrument for advancing his own ends.

It may be safely said that this whole organization of the Birmingham government is an exaggeration of the features which have had the worst effects in the United States,—the absence of responsible executive power, and the control of administration by numerous and irresponsible bodies of politicians. Imagine Boston to be governed by a council of forty-seven men, or New York by one of twice or thrice that number, chosen for three years on party lines and by caucus methods like those described; that this council was to increase its number by one-third chosen for six years from its own active or retiring members; that the whole body was to choose yearly a mayor with no other functions but those of a presiding officer, and that the whole of the city affairs, the employment of labor, the making of contracts, and the appropriation and expenditure of money rested with the council and its committees. All the corruption we have yet seen would be trifling compared with what would speedily follow from

such a system as this. Mr. Shaw is of a different opinion, and, in fact, it was in accordance with his view that the plan for a "Greater Boston," referred to in Chapter XXIII., was brought before the legislature.

When essentials are considered, the American functionary who corresponds with the English mayor is the president or chairman of the common council. And even that comparatively unpretentious officer has greater power than the English mayor, for in many, if not in all, of the American cities he makes up the council committees according to his own fancy, and thus exercises a far-reaching influence upon the work of administration in the various departments; while the English law obliges the council itself to appoint its own committees.¹ This is a matter of no trivial importance, as anybody at all conversant with municipal affairs will instantly understand.

The typical American mayor is no part of the council or its organization. He is elected directly by the people. He is an independent, coördinate authority. He bears somewhat the same relation to the council that the President of the United States sustains towards Congress, or the governor of the State toward the legislature. The analogy falls short, however, in the very important practical fact that the work of Congress and the State legislature is principally that of legislation, while the work of the municipal councils is of necessity principally that of administration. The theoretical independence and distinct executive responsibility of the President and the governors is extremely difficult to maintain in practice, for the line between legislative and administrative work and authority is not at all distinct. Still more difficult is it in practice to apportion duties and responsibilities between an American mayor and the common council in such a way as to secure real efficiency on both sides. It is not easy to see where, in the nature of things, the proper functions of one authority end and those of the other begin. In the dispersion of authority definite responsibility too easily disappears. The mayor's veto upon ordinances passed by the council divides responsibility for the by-laws. The council's power of rejecting appointees nominated by the mayor very considerably diminishes his responsibility for the proper exercise of the appointing power.² Where the control of the police is not taken out of the hands of both of these coördinate authorities and vested by the State in a separate board of commissioners, the police administra-

¹ Cf. Chap. XVII. as to the effect of this power, which is exercised equally by the Speakers of the federal and the State Houses of Representatives, and of the absence of this power and the election of committees in the United States Senate.

² See Chap. XXIV.

tion is likely again and again to be a bone of contention between the mayor and council. The embarrassments growing out of this divided responsibility are among the principal causes of the comparative failure of city government in the United States. Many earnest and intelligent municipal reformers, especially in New York and the Eastern States, have advocated the plan of greatly increasing the authority of the mayor, so that he may be held more definitely responsible for the administration of the various executive departments. It is the plan of a periodically elective dictatorship. As a remedy for the evils that grow out of interference by the State and the farming out of certain departments — such as parks or water supply — to special boards or commissions not responsible to the mayor, or the council, or the people, and further as a temporary measure of defence against untrustworthy and corrupt councils, this somewhat heroic plan of making the mayor a dictator, or, to use the Cromwellian euphemism, a “protector,” seems to have a great deal in its favor. But it is unrepresentative, and it does not at all solve the difficult problem of harmonizing the authority of the mayor and the authority of the council.¹ The relation between the two cannot at best be other than that of a shifting, unprofitable, and illogical compromise.

It would seem a little strange that the one school of reformers should not have been earlier opposed by another which would advocate the concentration of authority and responsibility in the council. Logically, the mayor must eventually swallow the council or the council must swallow the mayor, if political forces are to be accorded some degree of natural play; and the one man power is on the decline everywhere in this age.²

Undoubtedly the one man power has disappeared in the methods of carrying on our governments by the legislature; but it has secured an ample revenge in the harvest of anarchy which it has left behind, while outside of the lawful machinery of government it is asserting itself with redoubled vigor. In most of our cities the council has swallowed the mayor. The later tendency seems to be for the mayor to swallow the council. Real progress will be made when both are compelled to disgorge and to limit themselves to their proper share of power, with the added

¹ Note the discussion of this point in connection with the Brooklyn charter.

² “Municipal Government in Great Britain,” Chap. III., pp. 61-63.

function of enforcing responsibility upon each other in full sight of the people.

A municipal government, elsewhere than in the United States, after having constituted a ruling body, does not erect a separate one man power and give it the means to obstruct the ruling administrative body, and to diminish its scope and responsibility. The mayor elsewhere is an integral part of the council. English, Scotch, and Irish municipal government is simply government by a group of men who are to be regarded as a grand committee of the corporation — a corporation consisting of the whole body of qualified citizens. So far as these bodies have authority to pass by-laws at all, their authority is complete, and nobody obtrudes a veto. They appoint and remove all officials. They have entire charge of municipal administration, distributing the work of departmental management and supervision to standing committees of their own number which they organize and constitute as they please. If such a local government cannot be trusted, the fault is with popular institutions.¹ It is quite certain to be as good a government as the people concerned deserve to have. The location of responsibility is perfectly definite. The taxpayers hold every member of council responsible for his vote. The system is as simple, logical, and effective as the American system is complicated and incompatible with harmonious and responsible administration. City government in America defeats its own end by its "checks and balances," its partitions of duty and responsibility, and its grand opportunities for the game of hide-and-seek. Infinitely superior is the English system, by which the people give the entire management of their affairs to a big committee of their own number, which they renew from time to time.²

It is not necessary to remark upon the sharp contrast which this reasoning presents with all the principles laid down in this work. As applied to cities it will be further discussed presently, but meantime some further light may be gained by an examination of the London county council, the latest development in this direction by the Local Government Act of 1888.

Each of the 57 parliamentary districts created by the reform bill of 1885 was accorded 2 members, while the city proper was allowed 4;

¹ The issue taken in this work could not be more clearly defined.

² *Ibid.*

and thus provision was made for 118 members to be elected every three years. The councillors were empowered to add to their body 19 members having the rank of aldermen and holding their seat for six-year terms, but having no different authority from the ordinary members. They were further to choose annually, from their own number or otherwise, a chairman, a vice-chairman, and a deputy chairman, thus bringing the whole body up to about 140 members of a metropolitan parliament.¹

All subordinate officials are elected by the council and the work is supervised by committees, the number of which in Manchester is given by Mr. Shaw at sixteen grand standing committees and a hundred sub-committees. And it is in a system like this that Mr. Shaw thinks that "the location of responsibility is perfectly definite."

In the year 1892 the present writer, in a discussion² of Mr. Chamberlain's article, said : —

For one, he believes that the vicious principles involved will overcome these or any other safeguards, and that it is only a question of time when the English cities have a taste of what New York has been through. And if that happens we shall have a fresh outcry against democracy and universal suffrage.

The only thing which can avert such a result will be for the national government, instead of aggravating the difficulty as our State governments do, to step in, overthrow, and reconstruct the whole system, at least as far as London is concerned.

The following passage is from the *Saturday Review* of November 21, 1896 : —

The worst feature about the county council scandal of the week is not the mere fact that a number of the leading officials of an important public department have been discovered in a long-drawn-out and ingenious system of manipulating their accounts. That is bad enough in all conscience; but it is infinitely more ominous that this cooking of accounts was undertaken and carried on in the interest of one of

¹ *Op. cit.*, Chap. VIII., p. 242.

² "Our Failures in Municipal Government." Publications of the American Academy of Political and Social Science, Philadelphia, No. 88.

the great sections into which the council is divided, and had for its direct object the strengthening of that party in the constituencies and the perpetuation of its supremacy at Spring Gardens. Even when the scandal was dragged to light the representatives of that party in the council and in the press united in declaring it was a "mare's nest," and, although possibly these "unfortunate officials" had "deviated from the paths of strict rectitude," they had been so "baited by the implacable enemies of the department" that they had falsified their books lest the department should be discredited. The dismissed officials are objects of pity because they have "worked for their side"; those who insist on throwing full light on the scandal are "disgraceful persons," "vultures and wreckers," because the exposure will injure that side. These are the methods of Tammany reproduced to the very life; first manage to secure predominance on the governing body, then so manipulate the administrative departments in succession that each one becomes a stronghold, garrisoned by officials pledged and bound, from the highest to the lowest, to support by fair means or foul the system to which they owe their existence. The Progressives made a wonderful beginning in their works department, with its promises of plenty of jobs at high wages for working-class voters. They have now received a nasty check.

Still stronger is the testimony of the London *Spectator* of the same date:—

A very grave scandal has come to light in connection with the London county council. It has been discovered that the accounts of the works department have been "cooked" with an impudence and ingenuity hardly equalled in the annals of fraudulent companies or of insolvent states. To read the report of the investigating committee is to fancy one has got hold of an inquiry into the doings of some department of the third empire, or of some American municipality. . . . The specific scandal is bad, but the incident discloses something worse than that,—something which has not yet been sufficiently noticed. The worst feature of the whole business is the breakdown of the system of administration pursued by the county council. That the system has signally failed in a crucial case cannot, we think, be denied. One great object of all administrative systems is to obtain a visible and individual chain of responsibility for all acts. The people whose affairs are administered want, in every case of maladministration, to have the means of tracing the responsibility from the bottom to the top, and to be able to say to a definite man at the top, "You are the person ultimately responsible for this blunder, or crime, whichever it may be, and we call upon you to answer for what has been done." But under the existing system it is utterly impossible to adopt this

attitude. There is no one on whom responsibility can be fastened. To dismiss a subordinate official is practically worthless, and to try to make a committee collectively responsible is a farce. In theory, no doubt, the members of a committee are severally and collectively responsible for their acts. But this is mere theory. In practice, you may as well try to make a jellyfish responsible. The responsibility in the case of the county council is divided and subdivided between the officials, the members of the committee, and the council as a whole, till it entirely evaporates. Instinctively, the public realizes this. Though in the present case the works committee is responsible for the scandal, no one ever dreams of trying to hold them responsible. The public does not even ask their names, so little idea is there of their being answerable. We have repeatedly pointed out the evils which must, in the end, result from this want of visible and individual responsibility in the government of London, but we confess we were not prepared for so speedy and so striking a proof of the soundness of our complaints. We have said again and again that we have in London a system under which there will be no one to hang if and when a grave scandal occurs. A grave scandal has occurred, and there is no one visible on whom the responsibility can be fastened. What is wanted is a system of cabinet administration in London, etc.

On the 8d of March, 1898, took place the fourth election of members of the county council. On this the *Times* of February 24, observed:—

There is every reason to believe that if three-fourths of the constituent body in London could be brought to the polls on this day week, the Progressives would be reduced to their proper position and rendered incapable of doing any mischief. But even at the last county council election considerably less than a half of the qualified rate payers voted, the result being a tie between the Moderates and Progressives.

There was no personality and no direct issue to arouse the apathetic mass of voters, while the Progressive or positive side would expend much more effort in detail to bring out voters than the Moderate or negative side. The result of the election was:—

	PROGRESSIVES.	MODERATES.
Old council	58	60
New council	71	47

The Progressives proceeded at once to elect eight out of ten aldermen to fill the vacancies of those retired, allowing the Moderates two to save appearances. They had, therefore, in the whole council a clear majority of thirty, besides aldermen of their party holding over, or more than a quarter of the whole body.

The total number of qualified voters was 596,667
 The approximate number of persons who actually voted was 298,646¹

It must be noted as one of the most significant features of this election that, broadly speaking, the working-class constituencies have voted Progressive, while the Moderates have few seats save where the middle class predominates. . . . It would be a misfortune of the first order were this divergence of aims and interests on a class basis to go on increasing.²

That division of classes is just what is taking place in the United States and which must always result from a blind struggle of majority and minority for power. The only protection against extreme and disastrous consequences is in a strong executive, acting as a mediator in the interest of all. To secure such an executive is the problem of universal suffrage, and the objection in principle to the whole English system of county councils is that it destroys all opportunity for that.

The Progressives have won the day, and it is better they should have a free hand and that the experiment of administering London on their principles should have a full and thorough trial. They will of course tax us *ad misericordiam*, but that will be a good object lesson.³

Such an object lesson of the strongest kind does not seem to have produced any beneficial results in New York. It remains to be seen whether some adventurer of genius, of the type of the modern company promoter, will discover what enormous spoil — surpassing the gold and

¹ Letter from C. S. Stewart, clerk of the council, September 8, 1898.

² *Times*, London, March 4, 1898.

³ *Spectator*, London, March 10, 1898.

diamond mines of South Africa—is available in exploiting the class divisions in the London county council.

There is little doubt that the desire of the Conservatives to have the council broken up is due chiefly to their fear that it would train up a set of politicians in the nature of bosses, who would convert it into a little parliament or Jacobin club, which would seek to overawe the Parliament at Westminster.¹

The Jacobin opportunity is visible enough. In the absence of any responsible executive power in the city it stands face to face with the strongly organized national executive. If London is saved from the experience of New York, it will be owing to the superior strength of the national organization. It is hardly possible to imagine a more interesting experiment in political science.

On Tuesday, December 6, 1898, the council adopted, by a vote of 78 to 36—some of the Moderates supporting the Progressives—a recommendation of the committee on Housing the Working Classes.

That apart from the rehousing required in connection with clearance and improvement schemes, the council do approve of action being taken under Part III. of the Housing of the Working Classes Act, 1890, with a view to the purchase of land and the erection of buildings thereon for the purpose of supplying housing accommodation.

Thus far the work of this kind has been limited to clearing out unhealthy and dangerous neighborhoods and making them available by rebuilding. Now the policy is entered upon of furnishing houses by public funds to those whose basis of claim is poverty. One member said, "They had to decide this day whether they would spend a few thousands of pounds out of the rates in housing the poor, or be prepared to spend millions in the future on building workhouses, infirmaries, and lunatic asylums." The idea

¹ *New York Nation*, March 10, 1898.

that the last can be prevented by the first furnishes an interesting commentary on the action of the council.

It might have been urged, as indeed the report of the meeting indicates that it was, that it was going back to the old and exploded system of outdoor relief; that it would discourage private building enterprise, which could not compete with the public purse; that it would attract paupers, not only from the whole kingdom but from foreign countries; and that employers of labor would use it as a means of reducing wages. Two amendments were adopted after a lengthened debate: (1) Provided, that no charge be placed on the county rate thereby; though how that is to be prevented does not appear from the report: and (2) giving power for the purpose of purchasing or leasing suitable houses already or hereafter to be built or provided. In this country we should see a lobby already appearing on the horizon.

The report further says: ¹ —

When the recommendation as amended was put from the chair, a division was demanded, but, as the noes failed to appoint tellers, the amended recommendation was declared carried, and became the finding of the council.

That is, the minority, disorganized and without a leader, collapsed without even a show of resistance.

The reports of achievements by foreign municipalities have given a fresh impulse to the Socialist agitation in the United States for the taking over by city governments of many additional branches for the supply of public wants, a notable instance of which is the demand for the assumption of street railways. The obvious reply is that, whatever foreign municipalities may do, ours have demonstrated by abundant examples their total incapacity for anything of the kind, at least under present conditions. The lower fares and higher wages, which are

¹ *Times*, London, Wednesday, December 7, 1898.

demanding in the same breath, might possibly be obtained, but at the cost of a heavy margin to be made up by the general taxpayer and a large extension of the political machinery to be worked by one man power, which we carefully suppress within the government but are wholly unable to suppress outside of it.

We have next to consider what has been done in the United States with a view to improving the government of cities. The first marked step in advance was made in Brooklyn, New York, by the Act of 1880. The principal feature of that Act was to give the mayor full power of appointment to executive office, without confirmation by the council, while in all the leading departments single heads were adopted instead of commissions.

Hon. Seth Low, the first mayor under this charter, delivered an address while in office on the 6th of October, 1882, in which he said:

The very life of our charter is found in the thought of direct responsibility—a responsibility that can be recognized and seen of all men, and that cannot be shirked. It practically says to the mayor: “You carry on the business affairs of Brooklyn; choose your own instruments, and we shall hold you responsible for the work done; you shall be responsible for the efficiency of every department through your appointee; nobody is asked to confirm your appointments; you cannot shirk it if you want to, and we will hold you responsible, Mr. Mayor, for the faithfulness and the efficiency and the honesty of every workman that the city employs.” Now there are men who think that that is lodging with one man powers that are dangerous. Well, let us look at that for a moment. There are two things which make a locomotive valuable, as I understand it. One is the power which will make it go, and the other is its weight, which will hold it on the track. And that is the theory of Brooklyn’s charter: “We will give the mayor the power to conduct the city’s business, and then we will weight him with the responsibility of the whole concern.” Now Brooklyn has gone through pretty much the same experience in its efforts to get good city government that every other large city has had. We have had non-partisan boards, we have had our triple-headed commissions, and now we have come down to single-headed departments. The old idea seemed to be, if you can

only divide the power the people run less risk ; but the difficulty with every scheme of that sort was that it broke down just here. There was always found power to do harm, but there was never found power enough to do good, and by just so much as you divided the power you divided the responsibility, and you found all sorts of mischiefs being done by rings, and the people could not lay their hands on the man to hold to account. Therefore, as it seems to me, our city charter has a foundation in good logic and in sound philosophy as well as in experience, and I believe it to be the wish of Brooklyn that this charter, with its peculiar features, shall continue to be the charter of Brooklyn in those essential points, until it has had a fair trial in a series of terms.

It is interesting to note the comment upon this of the commission upon the Boston city charter, under date of November 6, 1884.

If the people were always sure of securing for the chief executive a man of such admirable qualifications as the present mayor of Brooklyn, the plan might be commended as one from which the best results could be obtained. But how would this great power have been exercised had the opponents of the present administration in that city triumphed in the last election? After a trial which had greatly improved the city's service and had reduced the burden of taxation, there was less than two per cent. difference in the votes cast at the election last fall for the two candidates for the mayoralty. It can hardly be doubted that, if the opposition to the present mayor had succeeded, the power which the State legislature has conferred upon the office would have been used for party purposes with tremendous effect. There are many instances in the history of our own and of every other government where the chief executive for the time being has defied public sentiment, and, by the adroit use of the patronage which pertained to his office, has held power long after losing the respect and confidence of the people.

Just that happened which was here indicated. Soon after the worse element got the upper hand. A bad mayor was elected, and though it does not appear that Brooklyn was even then worse governed under the new charter than under the old, most of the benefits of the change were lost. The reasons for this, however, are amply sufficient. Mr. Low assumed that the mere granting of power was sufficient to carry responsibility, but

that was not so. Special provisions were necessary for enforcing that responsibility, and no such provisions were made. To appreciate this we must recur for a moment to a consideration of the force upon which we have to rely, especially in cities. There is a great mass of people, as Macaulay says, neither very good nor very bad, hard at work in getting a living, and with very little time or inclination to attend to public affairs, but on the whole preferring right to wrong, when their personal interest is not directly involved, and capable of enthusiasm for striking personality, especially of a kind to command their respect and esteem. To get at this class politics must be made picturesque and as far as possible dramatic; and unless they are got at in this way public affairs will be handed over to professional politicians, to be used for their personal advantage.

It is, therefore, not sufficient to give increased power to the mayor. He must be placed, as it were, on a moral pedestal, with fingers from all sides pointing at his every action and almost every thought, so that the collective interest of the people may be aroused and their judgment guided in the choice of their public men. Now it is in this particular that the Brooklyn charter and all similar attempts have wholly failed. To begin with the matter of finance, which is the key to all government. The Brooklyn system is as follows: The mayor being elected every second year, there are two other officials, a city comptroller and a city auditor, elected in alternate years. These with two other officials, a supervisor at large and a county treasurer, make up the Board of Estimate and Apportionment, which prepares the budget or appropriation bill. All the estimates of the heads of departments are sent to this board in May and considered by it till July. It is then transmitted to the council, who have, till October 1, power to decrease but not to increase any item.

With or without any such amendment by them the budget goes into effect on the 1st of October. Here is a body of five separate and independent persons by whom the finances are directed, without the intervention of any individual whom the public can see. Neither there nor in the council is there any public discussion turning upon personal responsibility. The financing may be conservative and judicious, but consists merely of dry figures wholly without public interest. On the other hand, extravagance and high taxes, whether in rate or valuation, may produce grumbling and dissatisfaction or even open violence, but these can never result in combined public action for definite reform.

What system, then, will produce this result? Suppose that the powers of the Board of Estimate and Apportionment, with the rest of administration, were intrusted to the mayor alone and exercised through a city treasurer appointed by himself. In consultation with the heads of departments, also the mayor's appointees, these two would prepare the budget and lay it before the council. The heads of departments being present, every item of the budget and of administration would be thoroughly discussed, one person being responsible for every part and the mayor for the whole. The members of the council would have no responsibility themselves, but would have the duty, individually and collectively, of enforcing it upon the executive officials, and this play of forces, reported in the papers, would excite the public interest in the highest degree and guide public opinion in the selection not merely of mayors but of members of the council; while as every man would be responsible only for his own acts and words, the opportunity for winning reputation, and the security against losing it through the actions of others, would bring into public life a different class of men from those who are there now.

And not only the financial but other arrangements of the Brooklyn charter fail in the same way. The council may pass plans of administration and the mayor can veto them, but the council may override the veto by a two-thirds vote. Enough has already been said of the futility of the veto in the hands of the executive. The initiative of all items of administration should rest with the mayor or his officials, the power of veto after full discussion remaining with the council. If that body or its members wanted any work done they would urge the mayor to submit an order for doing it and his acceptance or refusal would involve precisely the personal responsibility which can be carried so effectively to the people. Again : —

In order to insure uniformity of action, to avoid all mutual interference, to maintain a thorough knowledge of all the affairs of the departments, the mayor of Brooklyn convenes all the heads of departments at a weekly cabinet council held on Wednesday.

Before this council the minutes of Monday's meeting of the city council are read, and the mayor is advised of any changes desired or objections made by any department affected by action of the council, and can thus decide, upon the fullest information, whether to accede, to ask for modification, or to veto.

At the same cabinet meeting any questions affecting the city or its administration are discussed.

These meetings are not required by law, but are a matter of practice only.¹

In this way the proceedings of the executive and legislative branches are carried on quite independently of each other. The object should be, not for the executive departments to come to an agreement among themselves, or for the members of council to do the same, but for each to be submitted to the public discussion and criticism of the other, so as to attract, inform, and guide public opinion.

The city of Quincy was the first in Massachusetts to give to the mayor the sole power of appointment to all

¹ Report of the Commission on the City Charter. Boston City Document, No. 120, 1884, Appendix A, p. 71.

executive offices, going farther than the charters of New York and Brooklyn in giving him also full power of removal, upon the single condition of filing with the city clerk and giving to the dismissed officer copies of a written order assigning the reason for such removal. To offset these powers with corresponding responsibility it was provided that the mayor might be removed and a new election ordered upon a vote of three-quarters of the whole council; and further—and this was intended to correct the last-named defect of the Brooklyn charter—that:—

SECT. 37. The mayor, the chairman of the school committee, the auditor, the comptroller, all of the administrative officers above named other than the members of boards, and the chairmen of the above-named boards, shall *ex officio* be entitled to seats with the city council. The mayor shall, when requested, and all the other officers above named shall, unless excused, attend its meetings, and they shall, at the request of the council, answer for their respective offices, committees, and boards at the meetings of the council. The said officers shall have the right to speak upon all matters relating to their respective departments, but upon no other matters, and shall have no right to vote. They shall give such information as may be required by the members of the council and answer such questions as may be asked by the members in relation to any matter, act, or thing connected with their respective offices or the discharge of the duties thereof: provided, however, that any such officer may refuse to answer such question if notice thereof has not been given at least three days before the time of the meeting in a notice book to be provided for the purpose by the city clerk and kept in his office, unless the council shall vote that the question is of such urgency and of such nature that it should be answered without notice.

After several years' experience it appeared that this provision was a total failure. The officers seldom attended, and if they did, it came to nothing, and the effect upon public opinion was wholly lost. The reason, however, is plain enough. The initiative of all public work, of all ordinances, and of all appropriations was left in the hands of the council, subject only to the veto of the mayor. As

long as the members held that power they cared nothing for the attendance of the officials, or were on the contrary anxious to avoid it as liable to throw too much light upon their own proceedings. But if they could get no work done and no money appropriated without the initiative of the mayor, they would be compelled to hear the public arguments of himself and his officials, and would be stimulated to cross-examination and criticism in order to gain their desired ends. The obvious objection to be encountered is the giving so much power to the mayor. But he would have no positive power at all. He could undertake or carry out no work, could not employ a single official, or expend a dollar without the consent of the council or without the accompaniment of its public and jealous criticism. His negative and most desirable power would be that no scheme of private advantage, of extravagant expenditure, or of corrupt legislation could take place without his full knowledge or consent, and therefore his personal responsibility. Log-rolling, lobbying, and secret intrigue would be of no avail without the collusion of the mayor, and that would be brought home to him in public session through a brief cross-examination by any single member of the council. The danger and the penalty in the face of public opinion would be so great that those obnoxious forms of procedure would soon become extinct. The maxim to be kept constantly in view is this: To command public opinion individual responsibility is absolutely necessary, and individual responsibility is impossible without the previous concession of individual power.

We may quote here the rest of the article from the London *Spectator*, above referred to:—

At the head of each of the great departments the council should place a member in whose abilities they have confidence, and this member should be responsible to the council, and so to London, for the conduct of his department. The various heads of the depart-

ments, meeting together under the chairmanship of the chairman of the council, should in effect form the government of London. If the council were wise they would pay each of these department heads two thousand pounds a year; on the very sound principle that if you pay men and pay them well, they will feel that they must take extra and special care to commit no breach of the trust they have accepted. But it will be said that this scheme gives the ordinary member of the council nothing to do but talk. We are not sure that the ordinary member of the council is fit for much more than that, any more than is the ordinary member of the House of Commons. If, however, work is wanted for the members, let four or five of them be added to the head of each department to serve under him as an advisory committee, a committee which he can use as the First Lord of the Admiralty uses the Junior Lords, but which cannot override him. A committee of this kind might, indeed, do a good deal of useful work in the way of inquiry and the like, but it should never be allowed to incur direct responsibility. That should always belong to the head of the department. At the present moment, for example, instead of looking helplessly around for some one to punish, and finding nothing but a jellyfish committee, we should have a definite minister of works for London on whom to cast the blame. To say that this would be but poor satisfaction is not reasonable. In the first place, a minister who felt himself responsible would probably have long ago found out the deception that was being practised. If he had not, his punishment and disgrace would certainly prevent any future scandal of a similar kind. Responsibility, responsibility, and again responsibility! That is the first and last principle upon which municipal government ought to be founded.

But if instead of the chairman of the council as the centre of responsibility of the departments, whose heads, as well as the chairman himself, would still be the creatures, and therefore under the protection of the council, the executive head of all was a mayor, separately elected by the people and independent of the council, so that the only interest of the latter would be to enforce his responsibility to the people, then we should have the essential postulate of popular government.

One of the anomalies of the old system is preserved in the Brooklyn charter. The Board of Education consists of forty-five persons, appointed fifteen in each year by the

mayor, so that only in the second year does he name even a majority. The diffusion of responsibility is so great that even this mode of constituting the board hardly offers any advantage over popular election. And this incoherent body has charge of numerous and costly buildings, of large financial disbursements, and of all plans and details of education; in short, is a complete *imperium in imperio*. There seems no reason why the buildings should not come under the Public Works department, the finances under the city treasury, and the schools themselves under a single superintendent of education, appointed by the mayor for the purpose. If the schools required closer supervision a board might be either appointed or elected, without power of administrative interference, but with every power of criticism in public sessions, at which the superintendent should attend, and of appeal to the mayor, the council, and ultimately to the people; thus again bringing forward the element of personality which has been so strongly urged as a necessity for control by public opinion.

It may be of interest to review some other of existing city charters in the United States. The last charter of New York, previous to the consolidation, dates from 1884. Like that of Brooklyn, it gives to the mayor full appointment of executive officers without confirmation, thus materially increasing his power; but the importance of personal responsibility is wholly left out of sight. The mayor is chosen for two years. The question of lengthened term seems to turn upon the advantage of greater permanence in office and longer experience, but these are more than offset by the diminished sense of responsibility to the people, particularly as experience goes to show that the people are always willing to renew the mandate of a mayor in whom they have confidence. The comptroller, the commissioner of public works, the corporation council, and

the president of each department are entitled to seats in the board of aldermen, with the right to participate in discussions, but not to vote. Probably they have not often exercised that right, because it would carry with it a pretext of responsibility without power, which would be equally disagreeable to both sides. If, indeed, they had the initiative of finance and legislation, the case would be very different.

A Board of Estimate and Apportionment, a body of four separately elected officials, makes up a budget by affirmative vote of all the members from the estimates of the heads of departments, and this is sent to the aldermen, whose amendments may or may not be accepted by the board. This may result in economy, but as the bodies deliberate separately there is no public discussion, no individual responsibility, nothing whatever to interest or inform the people as to the conduct of their public affairs, or to guide them in their selection of officials, for which, therefore, they in turn cannot be fairly held responsible.

The importance of single officials in executive administration has already been dwelt upon. Under the New York charter the police department is in the hands of four persons, the public charity and correction department of three persons, the fire department of three persons, health department four, public parks four, taxes and assessments three, docks three, Board of Education twenty-one. On this point Hon. Seth Low has already been quoted.¹

In 1897 a new portent appeared on the horizon of New York. The State legislature of 1896, according to the regular practice of running after any new notion which presents itself,—though in this case at the dictation of Hon. T. C. Platt,—was fired with an ambition of creating, among its other playthings, a city of three millions of

¹ See Chap. XXIV., p. 88.

inhabitants. A commission was appointed of fourteen citizens, more or less distinguished in various ways, to prepare a charter, resulting in a volume of nearly eight hundred pages. This was received with a chorus of disapprobation by leading citizens of different classes. It was vetoed by the mayors of New York and Brooklyn, to whom, under the constitution, it had to be submitted. Delegations went to Albany to protest against its passage. But the State government was in the hands of Mr. Platt.¹ It suited his purposes that the new charter should become a law, the legislature and the governor obediently registered his decree, and the fate of three millions of human beings was settled almost as arbitrarily as by the will of the Tsar of Russia.

The working of the new charter may well be awaited with anxiety. The mayor is given full power of appointment to office, and that of removal with the approval of the governor; but the danger of this great power is increased by the extension of his term to four years, and thus removing him further from the people, while no provision whatever is made for the enforcement of his responsibility by public or official criticism of any kind. However satisfactory he may prove to be, the people are forbidden to reëlect him, while a dishonest man knows that he can have but one term in which to plunder, or to intrigue for a successor with whom he can bargain in advance.

One instance of the failure of responsibility may suffice. The head of the fire department, known as the fire commissioner, is appointed by the mayor, is responsible to no other human being, and unless sooner removed holds office for six years. This commissioner appoints four fire marshals for different sections of the city, who are dependent solely upon him.

¹ See Chap. XXIII.

The fire marshal shall have authority *at all times of the day or night*, in performance of the duties imposed by the provisions of this title, to enter upon and examine any building or premises where any fire shall have occurred, and the buildings and premises adjoining and near that in which the fire occurred.

A similar provision has been alluded to in the law of Massachusetts, and taken together they show how easily the personal liberty, which is the pride of the Anglo-Saxon race, may disappear under such a system.

The budget is in the hands of a Board of Estimate and Apportionment, consisting of five persons, four elected separately for four years and one for six years. As in the old charter, it is subject to nominal revision by the Assembly, but with no public discussion. The largest step backward seems to consist in the establishment of a Municipal Assembly of two branches, one with twenty-nine members for four years, and the other with sixty members for two years, neither controlling nor controlled by any executive authority, and with the initiative in every kind of legislation except finance. The complexity of administrative and educational authority between the whole city and its parts is almost incredible. The whole aim of the commissioners seems to have been not to subject the government to the force of public opinion, but to seek security in an infinite number of self-acting checks and counterchecks, without much consideration into whose hands this concealed apparatus may fall. The one lesson of the whole is that such work should be done by a strong and responsible State government in the full light of public criticism, and not by a haphazard commission of citizens, working from their own consciousness and offering no authority for their recommendations except their conviction that these will work well. To a government constituted like this was handed over by the election of November, 1897, for four

years, an annual budget of seventy-five millions of dollars.¹

The figures of the vote in that election have been already given,² but some comments upon it may be instructive. The battle for this immense spoil lay between two most astute and thoroughly trained politicians, Messrs. T. C. Platt and Richard Croker. The former has been already mentioned. Mr. Croker, the son of a poor blacksmith in Blackrock, County Cork, in Ireland, emigrated to New York in early youth, where his life was that not uncommon with adventurers of his class. As to his ability one testimony will suffice.

In the nine years of Mr. Croker's leadership of Tammany (beginning in 1885) he made a record such as no other Tammany leader ever gained, for he lost not one of the political contests in which he was engaged.³

How can it be expected that such men can be successfully encountered by nominees of party conventions, elected simply as party dummies and acting in office as puppets worked by a legislature?

Mr. Croker had spent the last three years in England with apparently very extensive pecuniary resources, and spending much of the time in the expensive amusement of horse-racing. Early in the year 1897 he came back to superintend the election in New York City. It is curious that neither Mr. Platt nor Mr. Croker himself formally appeared. The candidate of the former was Mr. Tracy, a Republican who had been Secretary of the Navy under President Harrison and was expected to command the strict party vote. There was no expectation whatever that he would be elected, but he was to draw a large

¹ In fact, the budget for 1899 amounts to ninety-two millions of dollars.

² Chap. XXIII.

³ *Review of Reviews*, English edition, October, 1897, "Character Sketch."

enough fraction of votes—under the plurality system—to prevent any other fraction from equalling that commanded by Mr. Croker, the consideration being, as was at least supposed, that Mr. Platt should have a controlling voice in the government of the State.

The candidate of Mr. Croker was Mr. Robert Van Wyck, who had been a judge of a city court, but without other public distinction. By order, it was said, of Mr. Croker he made no speeches and took no public part in the campaign, posing simply as the standard-bearer of the Democratic party. Indeed, Mr. Tracy did little more, the campaign being as far as they were concerned a pure parade of party strength.

Against these two passed masters of politics was arrayed the Citizens' Union with its candidate, Hon. Seth Low. The fact that he received little more than one-quarter of the vote is made a ground of denunciation of universal suffrage in the city, and of argument that the people cannot be trusted to support good government or give their votes to good men. It is of the first importance, therefore, to ascertain how far the accusation is justified, and how far the conclusion is applicable even to a city like New York. Certainly no question is here raised as to the very high character and qualities of Mr. Low, but if the voters are to be condemned for not sufficiently appreciating him, then a defender of those voters is entitled to ask how far that condemnation can be sustained.

It may be conceded that he made an excellent mayor of Brooklyn in the years 1882-86, but what personal impress did he leave upon the office? What deed or word marked him as one appealing personally to, or finding response from, the hundreds of thousands over whom he was placed? His term of office was an illustration of our argument that the conditions of our public life make it impossible for any man to impress his personality upon

the public mind. Having been succeeded by a much inferior man, he retired from politics, and in 1889 became president of a university, to which he has given what to the multitude seems an enormous fortune, no doubt an admirable and generous work, but not specially calculated to arouse the enthusiasm of that multitude.

When the new charter of Greater New York appeared the *Evening Post* said :—

It is, in fact, one of the most skilfully designed measures for the establishment of partisan rule ever put forward for the government of a great city. If Tammany carries the election Platt will be recognized in its government.

The most respectable classes in the city rose up and passed resolutions against it. Taken to Albany it was passed by both houses and the governor, under orders from Mr. Platt, without a word of debate. Returned to New York under the constitution, it was vetoed by Mayor Strong of that city and the mayor of Brooklyn, but was again passed at Albany over those vetoes without even an allusion to them. The report of the commission submitting the charter was signed by the Hon. Seth Low, with, among others, General Tracy and ex-Mayor Gilroy. The *Evening Post* then said :—

His proper course was either to enter his protest against the objectionable features of the report or else to make a minority report, setting forth his objections and arguments against them. His failure to do so was very unusual, and excited the surprise of the public. It was the more unfortunate because we believe the instruction of the public to be the very highest duty of men in Mr. Low's position, particularly in our present condition. He owed it to the people of the city to discuss publicly and freely the proposed charter in anything on the subject which he printed, and especially in the report.

With much more of the same sort. Mr. Low accepted a nomination under this charter, but at no time has he discussed it or even alluded to it, except in general terms. Is there not some excuse for lack of enthusiasm ?

Some months before the election the Citizens' Union undertook Mr. Low's nomination and procured one hundred and twenty-five thousand signatures. It is rather singular to note that in the whole campaign he got but twenty-five thousand more. For more than a month he held back till he was assured that the demand for his candidacy was pronounced enough; very correct and proper, but not specially stimulative of enthusiasm. At last, on September 14, he wrote a letter of acceptance, wholly in general terms, with no personal initiative or programme, and that was the character of the campaign. He was simply the candidate of the Citizens' Union. That Mr. Low received one hundred and fifty thousand votes is most creditable to the people of New York; that he did not receive three hundred thousand is no proof whatever of the hopeless wrong-headedness of the people, or that they are not available for good work in the future.

Some notice must be taken of a fourth candidate, — Mr. Henry George. A native of Philadelphia and afterwards editor of a paper in San Francisco, he is chiefly known by his work on "Progress and Poverty," the success of which is significant of the humanitarian spirit of the time. Written in an attractive style, it sets forth the sufferings of the poor and declares that a remedy is at hand and available. The principle of that remedy is based upon a transparent fallacy, but the mere fact that any man should develop such a rainbow of promise was enough to give the book an immense circulation both at home and abroad. The considerable profits were spent by Mr. George in less lucrative efforts to propagate his economical doctrines.

At the time of the New York election he was a poor man, with no organization behind him at all comparable to the other three, but he had in the fullest measure the "enthusiasm of humanity." His nomination was hardly

a month before election, but he threw himself into the struggle and struck straight and hard, with an earnestness which was daily gaining him adherents. It was surprising to see how many conservative business men were prepared to acquiesce in his election. Taking into account the votes he received for the same office in 1886 it is not unreasonable to suppose that he might have reached one hundred thousand at this time. Eighty-three thousand deducted from Van Wyck and added to those which clung to his name would have given the victory to Low, with whom he declared himself in sympathy. If only our political methods would allow men to work their way to the front possessing that type of character, but of stronger brain !

The exertions of the campaign were, however, too much for him, and he died suddenly only a few days before the election. The votes which would have been cast for him, being in all probability drawn from the Democratic party, drifted back with his death to the regular nomination. His son, who took up his banner, had only a remnant of twenty-one thousand votes.

One or two further reflections suggest themselves and may bear the charge of repetition.

First. This election shows the folly and danger of giving a four years' term to the mayor. It is perfectly easy for the people to reëlect a good mayor for a second and third time, and if they do not do so a system is to blame which carefully conceals from them what sort of mayor they have got ; but as it is they cannot, without an exertion of power by the governor which is quite as likely to be bad as good, get rid of a bad mayor for this long term. Even if Mr. Low had been elected, in four years the people would lose much of their training and force in public affairs. Under Mr. Croker they are likely to become bound hand and foot. For a President of the

United States a four years' period is not too long, because the area is so large and the questions dealt with are so general. But for the details of city government recurrence to the ruling power of public opinion is of vital importance as often as every second if not every year. The evils of a system which defeats public opinion and throws the game into the hands of machine politicians are not to be overcome by diminishing the frequency of elections. And then the absurdity of making the mayor ineligible for reelection! As if Mr. Croker or Mr. Platt would care whether Van Wyck or Tracy could be put up again!

Second. It shows the disastrous effect of plurality elections. The fundamental principle of democracy is that the majority shall rule. If the largest of any number of fractions is to rule it may be a minority and even a small minority. It is neither democracy nor popular government. It leads men who are dissatisfied with the great parties to help set up fractions favoring their pet ideas and to salve their consciences with the conviction that though their votes count for nothing they are based on a principle which may some day prevail. It leads political intriguers to encourage such notions, since that reduces the fraction which they themselves need to secure. If Mr. George had lived, and if in consequence Mr. Low had been elected, he would have represented not much more than one-fourth of the voters, which would have been fiercely resented by the other three-fourths. It may be asked, How are we to get a majority? As we have already said, by a second election between the two highest candidates. If another ballot had been taken a week later between Van Wyck and Low a majority must have resulted. That would be too much trouble? If free government is worth anything we must take trouble. It is not as bad as the military conscription of France and Germany. Besides, one or two such experiments would

teach the people that they must pull together and not throw away their votes, instead of as now falling every year more and more into disintegration.

Third. It shows the folly of attempting to overcome a powerful organization, which has been growing up for half a century, by a mere sporadic burst of one or two months. If a disciplined force like that wielded by Platt or Croker is to be beaten it must be by still stronger discipline. If a constant succession of such men present themselves in the politics of the city and State it shows that the machinery is suited to develop them. Reform must consist in such readjustment of the machinery as to produce their counterparts, but of the right kind.

Fourth. This was declared to be an "anti-boss" campaign on behalf of the citizens at large and of good government. It is often said that one cannot prove a negative, and it is just as impossible to arouse a high degree of enthusiasm for a negative. And as to the word 'boss.' Every successful piece of executive work, an army, a railroad, a factory, must have a boss, either open or concealed. Great progress has been made of late years toward creating a "boss" of the right kind in cities, but the failure is in the want of responsibility which enables the public to recognize and appreciate their public men. The mayor is so covered up and concealed by the want of a properly organized council or criticising body that the people do not know a good man when they have got him. Compare the notoriety and prominence of Wood, Tweed, Kelly, Platt, and Croker with that of Low, Hewitt, Grace, and Strong. The only way to move masses of men is by personality, whether Washington or Lincoln, Napoleon, Platt, or Croker. Nine-tenths of our public efforts are directed towards suppressing personality. It is fighting against human nature, and human nature is hard to fight against.

Fifth. Any effective improvement in the government of New York must begin at Albany ; or, in general, reform of city government must be preceded by that of the State. According to the new charter the mayor of New York may, under certain circumstances, be removed by the governor. The legislature and the governor may at any time repeal, or, within the limits of the constitution, alter or amend the charter at pleasure, and it is so extremely complex that infinite mischief might be done by apparently innocent changes, especially if, as is more than probable, these changes were made for purposes of party or private intrigue.

The most practical utterance of Mr. Low in the campaign was a protest against the interference of the State in city politics. But what did he propose to do or how to prevent it? Nothing whatever. And yet there is in the public opinion of the State an instrument fully adequate to the work, if it only had a leader with a policy. One of the richest and most fertile political fields in the world lies fallow and uncultivated for the want of leadership of that kind.

The people of the State have never been appealed to for anything but party and, for the most part, national politics. If a man in Mr. Low's position, availing himself of the strength of the Citizens' Union, was to go forward as a candidate for the governorship, make a direct appeal to the people, and be prepared to stump the whole State with a definite programme upon lines already laid down by Mr. Low himself in former years, greater power and responsibility in the governor, the simplifying and strengthening of administration by appointment instead of election and single individuals instead of commissions, the improvement of legislation both in quantity and quality by public discussion under executive guidance, involving the public and personal responsibility of members, with other

similar provisions ; such a man could give a death-blow to Messrs. Platt and Croker and their kind, and not only offset the victory of Tammany in the late election but pave the way for political achievements higher than any which have been seen in this country since the war.

The present charter of Boston dates from 1885, about the same time with those of New York and Brooklyn. Great emphasis was then and has ever since been laid upon the increased power of the mayor. This increase consists in his added power of nomination of certain officers previously elected by the council, and vetoing items instead of the total of appropriation bills. But there was left that which effectively neutralized all his power, — confirmation of his appointments by the aldermen. The charter commission rejected the Brooklyn idea of giving full power of appointment to the mayor as involving too much risk in bad hands. They saw also the evil of giving confirming power to the aldermen. But they could think of no better refuge than an executive council for the mayor like that of the governor, an arrangement which was happily afterwards rejected. By subsequent legislation a timid beginning was made in allowing the full power of appointment of a few officials and of removal of any for cause assigned ; though as the officer in most cases continued to hold till his successor was confirmed the power was of doubtful efficiency.

It seems never to have occurred to the commission, as indeed it has not to any framers of city charters, that the true way was not to limit the mayor in his selection of agents, but to hold him directly and promptly responsible through public criticism by individual members of the council for any subsequent act not only of himself but any of these agents, which is only possible if he has the unfettered choice of them.

The commissioners also recognized to some extent the

advantage of single heads of departments over boards or commissions, and there was established under the charter and subsequent acts a single fire commissioner, one for water and one for public institutions, though some boards, and notably the school board in full vigor, were allowed to remain. In none of these cases was any provision made for the public enforcement of responsibility.

The commission further recommended that in the city council the aldermen should be replaced by an executive council of five persons. As stated, this was rejected and the council left to consist of two boards. As to this much-vexed question it may be said that, while the State legislature, as making laws with almost unlimited power, needs the consideration of two branches, the city government, being subject to the State with respect to laws and making only ordinances, needs but one. It is said that two branches are necessary to check reckless schemes of work and expenditure, which may be true while as now nearly all power and responsibility rest with the council. But if the initiative was left with the executive branch, the council being limited to public criticism, one body would not only be quite sufficient for the work itself, but more effective in informing, guiding, and concentrating public opinion.

The fortress of the school committee is as yet too impregnable for this or any other charter commission to venture on an attack.

The whole initiative of legislation and finance rests with the two branches of the council, notwithstanding that the mayor submits a summary of the estimates of the heads of departments, and it is interesting to note the severe injunction with which Section 12 forbids either branch of the council, or its committees or its members, to "take part in the conduct of the executive or administrative business of the city or in the expenditure of public

money"; at the same time that an almost indefinite power of manipulation of the whole is left to them by other provisions of the charter.

Whenever a new charter is established for any great city, there is usually a flourish of trumpets, proclaiming that a new departure gives promise at last of good city government. To one who finds that most of the old provisions are preserved in principle with only changes of detail, it is not surprising that after no very long period a new revision is called for on account of abuses which are still rampant.

The so-called Bullitt Bill was enacted by the legislature of Pennsylvania on June 1, 1885, and adopted in Philadelphia on January 1, 1887. It was pleasantly entitled "An Act to provide for better government of cities of the first class in this Commonwealth." Under it the mayor, elected by a plurality vote,¹ was to hold office for four years and not be eligible for a second term; that is, recurrence to the people was to be only at long intervals and they were not allowed to express their approval even of the best mayor, while he was told that no amount of devotion to the public service could obtain for him the reward of public approval. It has been demonstrated both in theory and practice that the limit of a single term forms no effective check upon a bad official.²

The mayor was to call the heads of departments together once a month for information and advice as to the affairs of the city. But of what use were such meetings since they made no provision for public discussion, or for criticism by the council, or for information and guidance to be furnished to the public? The futility of this, already

¹ Cf. Chap. XXIII.

² Compare De Tocqueville as to Louis Napoleon, Chap. XI.; also the history of the popes, who, having no responsibility for or power of controlling the succession, have made the most of their own terms of office.

referred to in the case of Boston, is greatly increased by the multiplied sources from which the authority of these officials is derived and their complete independence of each other.

Of the executive officials a part are appointed by the mayor with confirmation by the council, another and the principal part elected by the two branches of the city council in convention, while still others are elected by popular vote for three years. Even the courts take a hand in the game, appointing two out of three building inspectors, to share their functions with one elected by the city council. The Court of Common Pleas appoints a Board of Public Education of thirty-three persons for three years, and a Board of Revision of Taxes, who appoint the assessors of real estate, which alone is assessed in Philadelphia.

There are two bodies, a select council of thirty-one members for three years and a common council of sixty-eight members for two years, with the usual indefinite control over legislation, finance, and administration, notwithstanding the injunction that they shall never interfere with the latter. It is difficult to imagine a more extraordinary jumble of authorities or a more complete disappearance of responsibility. Probably in Philadelphia, as well as elsewhere, there is infinite denunciation of the people for not taking pains to make the system work better.

Chicago is one of the cities which have the most unsavory reputation, and with good reason. But there is abundantly sufficient cause without recurring to the undoubtedly mixed character of the population, which is in a measure offset by the fact that there is no city in the United States which boasts of more local public spirit, or where money is more freely poured out for anything which will add to her reputation. If money freely bestowed

could command a good city government, Chicago would at once bound to the highest rank.

There is a mayor and a city council composed of thirty-six aldermen, all elected for two years with minority representation. The city clerk, city attorney, and city treasurer are separately elected, and are therefore independent of everybody except the ward politicians. The other city officers are appointed by the mayor with the advice and consent of the city council.

The city council shall annually, before the third Tuesday in September, ascertain the amount of appropriation required for all corporate purposes; and by an ordinance, specifying in detail the purposes for which appropriations are made, levy the amount upon all the property subject to taxation.¹

These two provisions as to appointments and finance may be said to throw the whole city government into the hands of the council and its committees, notwithstanding the power of the mayor to veto items in appropriation bills.

The aggregate amount of taxes levied for any one year, exclusive of the amount for the payment of bonds or interest thereon, shall not exceed two per cent. upon the aggregate valuation of all property subject to taxation.

Twenty dollars in the thousand, say about one-half the average income from the best security, seems a liberal allowance, but besides that the valuation is perfectly elastic and left wholly to the discretion of the assessors; while still beyond lie the magnificent possibilities of debt. Nowhere more than in Chicago is there need of a direct appeal to the mass of silent but sound public opinion. Nowhere does the suppression of all possibility of such appeal by the diffusion of power and responsibility threaten more of disaster.

St. Louis is perhaps the city which prides itself most

¹ Boston City Document No. 120, 1884, Appendix, p. 75.

upon recent and valuable reforms in its charter, but it is difficult to see where the gain is made. There are two houses of assembly, one, the council, being composed of thirteen members, elected for four years on a general ticket, in alternate terms of two years. One of the thirteen is specially elected as president. The other, or house of delegates, consists of one member from each ward, or twenty-eight in all. It is worth noting that while the president of the council is elected separately by the voters the house of delegates chooses its own "Speaker," the difference being exactly that between the presiding officers of the national Senate and House of Representatives. It would be an interesting subject of inquiry, whether the result will in the long run be the same. The two branches have the same unlimited initiative in plans of administration and of finance which we have seen in other cities, the mayor being limited to a veto, though this may apply to items as well as a whole appropriation bill.

In the executive branch the mayor is elected for four years, going back to the people only at long intervals. About one-half of the executive officials are elected by popular vote, the other half being appointed by the mayor and confirmed by the council. The control over the officials is of the most complicated nature. If the mayor removes an elected officer the council may by majority vote either reinstate him or order a new election. If the mayor removes an appointed officer the council shall proceed to elect somebody to fill the place. Any officer appointed by the mayor may be removed by a majority of the council, but in that case the mayor can fill the place without confirmation being required. If the mayor makes a nomination which the council refuses to confirm he must make another within ten days, and so keep on till the council does confirm somebody, though if he allows the ten days to pass the council may elect somebody to

fill the place. During all these processes there is never any public contact or discussion between the executive and legislative branches, but some communication is inevitable and it would naturally take the form of secret intrigue.

As an instance of the want of administrative coherence, it may be remarked that the president of the Board of Public Improvements is elected by the people, while the other members of the board, street commissioner, water, harbor, and park commissioners are appointed by the mayor and confirmed by the council. Of course there can be no mutual sympathy or control, while it is more than likely that there will be no common purpose or plan of action. It may be said, however, that the St. Louis charter goes farther than almost any other in dispensing with boards and providing for single heads of departments.

It would be presumptuous to say that St. Louis is not and cannot be well governed under such a system. The argument is only that if there are failures of government, the system furnishes abundant explanation of them without resorting to universal suffrage as a scapegoat.

The examples quoted will suffice to show the great uniformity in the difficulties of city government. We may sum up the two principal objects to be kept in view in any effective attempts at reform :—

1. Some means of informing, guiding, and arousing the enthusiasm of the great mass of people who are too busy to give much attention to politics, but who can be relied upon to exert an irresistible force if simple and definite questions of personality and right and wrong are placed clearly before them; and,

2. Some means by which the State government shall be led to exert its almost unlimited power in municipal affairs so as to raise them to a higher standard, instead of acting as a check upon all possible progress in that direction.

If we consider the prosperity and reputation which would be sure to follow upon good, economical, and satisfactory government, and further, the eager competition of forty-five States and hundreds of cities in the pursuit of at least the first-named objects, it seems as if the intelligence and energy of our people, so conspicuously displayed in private enterprise, must sooner or later work out successfully the problems involved. The diversion of public attention from these domestic questions constitutes perhaps the most disastrous feature of the foreign complications which have arisen.

CHAPTER XXVI

PROPOSED REMEDIES

THE conclusions at which we have thus far arrived, whether right or wrong, are at least clear and definite. We have assumed that the only really indispensable part of government is the executive, which is the instrument for carrying it on; that the legislature is or should be the instrument for testing the work of the executive and insuring that the government is carried on solely with a view to the interest of the governed as a whole; and that as soon as the legislature undertakes to do the governing, and reduces the executive to be merely its agent, the result is, first weakness and confusion, then corruption and the rule of private interests, then anarchy and chaos, and finally, after more or less of civil conflict, the restoration of order, as the least of two evils and by the tacit or enforced consent of the people, through the strong hand of despotism. We have seen that the protection of society against faction and violence, against powerful combinations of private interests on the one hand, or outbreaks of mob riot on the other, is not and never can be found in the legislature itself, but in a firm and strong executive government holding the contending forces in control with a steady hand. The security against abuse of this executive power, a risk undoubtedly so great, especially if there is room for collusion with the legislature or any of its factions, that only the importance of the end justifies the incurring it, consists in the mass of public opinion. This public opinion must not be identified with any noisy or

self-asserting fraction of society, whether poor or rich, but with the multitude of thousands who are hard at work in supporting themselves and their families, have very little time or attention to give to politics and no direct personal interest in them, but who have a natural preference for right over wrong and a capacity of enthusiasm for striking personality, especially of a kind which commands their respect.

The nursing and development of this public opinion is the object of capital importance in popular government. It is the working force alone to be relied on for resistance to violence or intrigue, to the schemes of faction or private interest. It is the instrument for preserving order and security in time of peace, as the police force is in time of civil disturbance, or an army in time of war. It should be kept, therefore, in the highest possible state of discipline and efficiency. The component units should be provided with subjects of common interest, they should be made to feel that their own and the public welfare depends largely upon their individual action; to see direct results following from their efforts in the right direction; to have confidence that the action of one will be sustained by that, if not of all, at least of a majority of others; to cultivate that mutual reliance which makes each man in a trained regiment stand firm in battle in the confident assurance that his comrades will not fail him. We have seen that these results can only be obtained through individual personality, because it is that alone which does or can unite masses of men, especially those who can give only temporary and partial attention, can arouse their enthusiasm and make them work together. If, on the other hand, the multitude are appealed to through measures only, they will differ in small fractions, not only as to the relative importance of measures in themselves, but as to the details of those measures, will become confused and

uncertain, will lose their interest and gradually give up all effort, abandoning public affairs to those who will take the trouble to master them. We have found that these principles are directly violated in every department of our governments, national, State, and city, and have endeavored to trace the resultant evils to this violation.

As to the nature of existing evils there is hardly any dispute, the contention being as to the possibility and the means of remedying them. One most hopeful sign has been pointed out in the decreasing tendency to attribute them wholly to the perversity and indifference of the people, and in the disposition to seek their origin in defective arrangements which mislead and defeat the popular will. The remedies available may be sought in three directions: (1) The strengthening and concentrating of executive power; (2) the improvement of the character of legislative bodies; and (3) the readjustment of the relations between the two branches. The first of these has been tried to some extent in the case of mayors of cities, perhaps in some slight degree with the governors of States, but never at all with the President of the United States. The third point may be said to have never received any attention at all. It never seems to occur to any of the reformers that the root of the difficulty lies in the absorption of all the powers of government by the legislature; or if the idea does present itself it is treated as an insoluble fact against which it is useless even to think of contending. This conviction is greatly strengthened by the universal practice of looking to the legislature for the accomplishment of everything, whether in the making or the execution of laws, and the perfectly logical, if unacknowledged, conclusion that the legislature cannot be expected to abridge its own powers or increase those of the executive. The whole strength of effort towards reform, therefore, is directed towards raising the quality

of the legislatures and making them respond more closely to public opinion. Among the measures towards this, and the one which has received most attention, is that known as proportional representation. Of the many treatises on the subject, perhaps as clear and fair as any is the work under that title by Professor John R. Commons, of Syracuse University. We will take his book as summing up the arguments of all the advocates of proportional representation. It is worth noting, that he agrees almost exactly with the character of the evils described in this book, differing only as to the nature of the remedy.

Thus as to the failure of legislative assemblies : —

The American people are fairly content with their executive and judicial departments of government, but they feel that their lawmaking bodies have painfully failed.

Stated in another way, this might mean that they have paid very little attention to either executive or judiciary, but have concentrated the whole upon the legislature.

This conviction pertains to all grades of legislatures, — municipal, State, and federal. The newspapers speak what the people feel, and, judging therefrom, it is popular to denounce aldermen, legislators, and congressmen. When Congress is in session, the business interests are reported to be in agony until it adjourns. The cry that rises towards the end of a legislature's session is humiliating. The *San Francisco Bulletin* is quoted as saying : " It is not possible to speak in measured terms of the thing that goes by the name of legislature in this State. It has of late years been the vilest deliberative body in the world. The assemblage has become one of bandits instead of lawmakers. Everything within its grasp for years has been for sale. The commissions to high office which it confers are the outward and visible signs of felony rather than of careful and wise selection." Every State in the Union can furnish examples more or less approaching to this. Statements almost as extreme are made regarding Congress. Great corporations and syndicates seeking legislative favors are known to control the acts of both branches. The patriotic ability, and even the personal character of members, are widely distrusted and denounced.¹

¹ J. R. Commons, " Proportional Representation," Chap. I., p. 1.

Still the legislature is and must be supreme.

However the executive may be chosen, he is properly only the agent of the legislature. As such he is not called upon to exercise discretion, which is the prerogative of legislators, but to execute laws exactly as their framers contemplated. He is, therefore, strictly speaking, not a party official but a non-partisan agent.¹

And speaking of the ideal legislature reformed by proportional representation, he says : —

It might then be expected that the legislature would resume its rightful place as the sovereign branch of government. Unquestionably its position is such that, no matter how degraded its character, unless restricted by the Constitution, it gradually absorbs supreme control of the other departments. It alone can grant and withhold financial support; and sooner or later this power subordinates the executive, the judicial, and the administrative branches. The national Congress, notwithstanding presidential vetoes and popular distrust, has drawn to itself the management of the details of administration. State legislatures and municipal councils would have done the same but for the increasing constitutional restrictions which have subordinated their financial powers to the judiciary and the executive. Could the Federal Constitution be readily amended, doubtless similar restrictions would be imposed upon Congress.²

The only restriction upon the legislature is the Constitution, which emanates directly from the people. Nothing is to be hoped for from the executive, which yet emanates just as directly from the people.

The legislature could then safely be made the sovereign organ of the government and the promoter of social reform. The executive would sink to its true position, that of an agent for carrying out the policy of legislation, and the judiciary, instead of annulling the laws, would simply apply them to concrete cases.³

That is to say, government by the legislature alone is the foundation principle of our institutions. All that can be done is to improve the legislature.

How closely Professor Commons, up to a certain point,

¹ *Op. cit.*, p. 193.

² p. 232.

³ p. 234.

agrees with the present writer is shown in the following passage : —

If the people wish to bring to their legislatures intelligence, experience, ability, probity, and sympathy with popular aims, they should first develop those forms of government and that political machinery which will insure adequate security, support, and dignity to such qualities. . . .

The American Speaker, unlike the English and Canadian, is a man of dictatorial power. In the national government he is ranked next to the President. He appoints the committees, lays down the rules, and controls legislation. He has a similar position in all State legislatures, and in many municipal councils. Leadership is essential wherever a body of men are compelled to act in council. But there are two kinds of leadership. One is that of debate, argument, and statesmanship, depending upon ability and enthusiasm, where the followers have confidence in their chief, accept his leadership, and act in concert with him voluntarily. This is the leadership of Gladstone in the House of Commons. The other is that of coercion, growing out of necessity and circumstance, where followers distrust the ability of any leader they may choose, where they distrust their own ability to follow, and therefore they consent to the abdication of self-government and the elevation of a tyrant. This is the leadership of the American party Speaker. If the members should keep the control of affairs in their own hands, there would be wrangling and wire-pulling over the appointment of committees, and then factions and mutiny on account of their final disposition. The only escape from this evil is the power of the Speaker. . . .¹

Though the Speaker has a unique dominion, there is another power in American councils, legislatures, and Congress still more ominous, — the lobby. It is the lobby which controls legislatures to-day. If any law demanded by the people at large, or even by a majority of the lawmaking body, is defeated or emasculated, its fate can be traced to the dominating influence of the lobby.

The lobby is a new feature of representative government. It is coincident with the very recent growth of large private corporations. It is organized by them. They have such immense interests at stake on the turn of legislation, that their lobby, with unlimited resources at its disposal, is almost irresistible.

But the lobby could not have acquired its powerful influence were it not for certain qualities in the legislative bodies themselves, which place them at its mercy. Corruption is not the only explanation. Legislators fall into the nets of lobbyists largely because of inexperience.

¹ *Op. cit.*, pp. 43, 44.

ence and incapacity. The lobbyists themselves are the shrewdest, brightest, and most influential men of the State or nation. They often control the party spoils, and an ambitious legislator cannot afford to antagonize them. The lobby is organized as well as the legislature itself. It has its chiefs who band together. All of the corporations and enterprises interested in legislation practically combine as a unit. Then these able and honorable chiefs employ their resources of argument and suggestion with individual legislators and before committees. They take the dimension of every individual who comes in their way. But if their honorable methods are inadequate they then turn the legislator in question over to the petty lobbyist who carries the pocket-book. Their own hands are clean.

It is not to be inferred that the lobby alone is responsible for corrupt legislatures and councils. It is equally true that corrupt legislatures are responsible for the lobby. Lawmakers introduce bills attacking corporations for the express purpose of forcing a bribe. This is called a "strike," and has become a recognized feature of American legislation, to meet which the corporations are compelled to organize their lobby. . . .¹

Both machines in nation, State, and city are the tools of the corporations and speculators who plunder the public. Consequently those voters who would be independent, and would gladly revolt against ring rule, have no place. They cannot elect an independent candidate unless they carry a majority of their petty ward or district. This is almost impossible in the face of the party organizations. They can do nothing but combine with one machine against another. Hence come hopelessness and apathy of the better classes of citizens. Hence, also, come those violent explosions and hysterics of reform, those popular uprisings, which occasionally break down the barriers of machine rule, but relapse again, like a mob in contest with troops. The gerrymander and inequality in the representation of parties are bad enough, but the deadly evil of the system is the expulsion of ability and public spirit from politics, and the consequent dictatorship of bosses and private corporations.²

It is in the conclusion from these premises that our argument differs *toto cælo*. The position here taken is that the absence of leadership, the rule of the Speaker, of private interests, and the lobby, result from the fact that the legislature is composed of precisely equal units, subject to no authority, jealous of each other and of any personal prominence, so that the majority, which is the

¹ *Op. cit.*, pp. 45-47.

² pp. 84, 85.

only possible instrument of doing any work, has to be obtained by the processes described; in short, that the trouble is inside and not outside of the legislature.

Professor Commons takes a different view.

We have now been able to follow the various evil phases of recent American political life directly or remotely to their root, in the system of electing single representatives from limited districts,—a system which we have inherited unchanged through six centuries of political and social revolution. At the present time, when political parties based on social questions divide the people and seek representation, we are using a system of representation based on locality. The political parties inevitably seize upon this machinery and use it for party ends. Thus violently distorted, it represents neither sections nor parties. Instead, it has divided the people in every district into two camps, each dictated by its party machine and spoilsmen.¹

Referring to the guilds of the Middle Ages, he says :—

The circumstances of the times and the needs of defence drew the residents nearer together in common interests. This appears first in the development of the guilds of merchants. Through commerce they gained wealth; this brought political power; and soon the merchant guild absorbed the lawmaking power of the entire city, its charter became the city charter, and its *maire* the city mayor. In still later times, when manufactures rose into prominence alongside merchandising, new guilds were organized, representing different trades. There were the weavers, the shoemakers, the goldsmiths, the butchers, and many others. Each of these craft-guilds had its own president, the *alderman*. They soon demanded a share in the city government, which was finally granted, and their aldermen were given the right to sit together as a lawmaking body, each representing his own guild.

The question arises, How came it that so rational a system as the election of aldermen by the different organized interests of the cities should have been displaced by the arbitrary system of election by territorial districts or wards?²

We think there is a very cogent and sufficient reason for this.

The grand panacea for this poison of single-district elections is to enlarge the areas so as to include a number of candidates, and then to allow the voters to distribute

¹ *Op. cit.*, p. 83.

² p. 23.

their votes, so that different groups of voters, interested in different social and political questions, may have a chance of securing a representation.

On this point we take issue from the start. Assuming that the way to reach the multitude is through men and only indirectly through measures, that method is the most effective which most strongly puts forward personality. Mr. Commons complains that the district voter finds but one candidate of each party for each place, and is compelled to choose between those two. Exactly, and it is the competition of the two parties in their nominations which has enabled the voters to maintain the standard of public men as high as it is now. That they cannot do more is owing to the want of machinery for testing and making clear to them the quality of the men whom they have chosen. Any increase in the number of candidates of each party for each place, whether to two, six, or ten, renders the average voter confused and uncertain. Of a single candidate he may have some knowledge, either personal or by hearsay, or failing that he has at least party to guide him. But as soon as more candidates are offered he has to decide upon their relative merits without even the party guide, a task for which he is unfitted and which, unless he has some special object to gain, he will soon renounce in disgust. For example, in Boston, where twelve aldermen are nominated at large, of whom each voter has to select seven, it is ludicrous to see the helplessness with which voters, even among the well-to-do and educated, gaze at this list of twelve names, which to them mean absolutely nothing else.

It is a principle in elective constituencies that the larger the area over which a district extends, the more distinguished and capable are the candidates of all parties.¹

¹ *Op. cit.*, p. 39.

Where is the evidence of that? Can it be shown that the average member of Congress is superior to the average member of the State legislature, unless indeed in the management of party politics, or the average member of the legislature to the average city alderman? The last may be true of cities like Boston or New York, where the ignorant vote is so skilfully handled by the "Boss," but it is by no means certain as to the smaller cities of the interior.

Elaborate figures are given to show, and bitter complaint is made, that a majority of representatives, chosen by single-district votes, does not correspond to the total popular majority. But it is not required to do so. The total popular vote is required for the single executive head, and is generally obtained in the States, though it is often defective in the cities through election by plurality,¹ and in the nation through the medium of the State electors.² But in the legislature it is the majority of districts which is required, so that the majority of the body may be established as clearly as possible by the elections. Mr. Commons thinks, on the other hand, that different interests should be separately represented in the legislature. Let us see. As has been said, that which constitutes the strength of the English government, that which has made up its history for the last two hundred years, is the growth and continuity of two solid and coherent parties. Occasionally they have wavered when available leaders and issues were wanting,³ but as soon as a strong man came forward to take the reins, the ranks closed up and the work of mutual competition again went on. On the other hand, the curse and the cause of failure of representative government on the Continent of Europe is the formation within the legislature of unstable and dissolving groups. In France the Ex-

¹ Cf. Chap. XXIII.

² Cf. Chap. XVI.

³ Cf. Chap. XXI.

trême Right, the Right, the Right Centre, the Left Centre, the Left, and the Extreme Left are the names of differing factions which unite only for temporary purposes, and to accomplish a victory over some other unit, but which are fatal to stable and firm government. The same is true of Italy, Spain, and Austria, and if not of Germany, it is because a military despotism holds all alike in subjection. The system of guilds of the Middle Ages was valuable as a means of resistance to the Crown or a feudal nobility, but it was fatal to the development of a true popular power.

Could they combine throughout the nation, the labor unions, scattered as they are through a hundred districts, would unite, and the more intelligent of the laborers would have influence in selecting those who represent them as a body, just as they select their national presidents and secretaries. As it is, they are forced into artificial territorial divisions, and are compelled, along with the whole of the electorate, to submit to the candidates who appeal to the more ignorant, thoughtless, prejudiced, and easily influenced masses.¹

Are not the labor unions tyrannical enough now, without giving them a compact organization as a separate party in the legislature? Imagine a legislature made up of distinct groups of Republicans, Democrats, Socialists, woman suffragists, labor men, prohibitionists, religious fanatics, all perfectly determined that nothing should be done unless their special objects were provided for. Would the lobbying and log-rolling be any less than now, or would the strength of the groups be any less made use of by designing men? Certainly no evidence of that kind is offered.

It was a perfectly natural and reasonable evolution to break up the organized interests and to divide the voters into sections of human beings, proceeding to elect one individual upon his qualities as a statesman, aiming at

¹ Commons, "Proportional Representation."

good government for all, and not merely as agent for a class or group.

Mr. Commons is eloquent upon the subject of gerrymandering, of which of course no denunciation can be too strong. But we think he wholly mistakes the source of the evil.

Both political parties practise it, and neither can condemn the other. They simply do what is natural: make the most of their opportunities as far as permitted by the constitution and system under which both are working. The gerrymander is not produced by the iniquity of parties; it is the outcome of the district system. If representatives are elected in this way, there must be some public authority for outlining the districts. And who shall be the judge to say where the line shall be drawn? Exact equality is impossible, and who shall set the limit beyond which inequality shall not be pressed? Every apportionment Act that has been passed in this or any other country has involved inequality; and it would be absurd to ask a political party to pass such an Act, and give the advantage of the inequality to the opposite party.¹

All this is owing to the irresponsible fractions which make up the legislature without leadership and without control. If the matter of redistricting was in the hands of a single executive head, chosen by and responsible to the whole people, and if his plans, prepared after due consultation with his chosen officers, were submitted to the legislature and accepted or rejected after a full discussion before the tribunal of public opinion, gerrymandering would soon come to an end. Either there would be permanent districts with names which would soon become time honored,² of which the representation would be enlarged or diminished with the changes of population, as is that of the States in Congress, or else the redistricting would be made on principles so equitable and honest as to bear the test of public discussion.

¹ *Ibid.*, p. 50.

² See Chap. XXVI. as to the *arrondissements* of Paris.

It seems strange to imagine that the keen ingenuity of the politicians who control our public life could be baffled by so simple an expedient as abolishing the district and nominating candidates at large on a general ticket. The fact is that the legislatures will have to be reformed from within and not from without. The so-called Australian ballot is apparently one of the best political reforms which have been made in this country. It has greatly improved the elections, but has affected but slightly, if at all, the quality of the legislature.¹

Here is another of the effects which Mr. Commons charges to single-district elections :—

It is characteristic of the greatest of party leaders that they raise up about themselves a body of strong admirers, and a body of equally vigorous haters. Consequently, we seldom find in American politics that a great party leader can be elected repeatedly in a close district. This principle comes out distinctly in the election of the President of the United States. Those men who have achieved the highest honors in the leadership of their party in the halls of Congress and in political battles, are seldom elected to that high office. They are not often even nominated; and if nominated they are almost destined to be defeated. Unknown and obscure men, or men whose record has been made entirely apart from leadership in political debate, are hunted out and given the places that in the affection and admiration of the party voters belong to others. The true leaders must be content with appointive positions.

In congressional and legislative elections also, it is well known that, when a party leader has achieved prominence, the entire resources of the opposite party throughout the nation or State are thrown into his limited district to compass his defeat. And these extraordinary exertions are usually successful, if the district be in any way a close one.

¹ Yet even this expedient shows how carefully the effect of every change should be watched, and the importance of a responsible executive who can be called upon to take into consideration any unexpected effects, and to submit to the legislature for public discussion plans for modifying or strengthening them. Already the Australian system has caused serious disputes as to rights and methods of party nomination, and the places which candidates may claim upon the official ballot published by the State.

This is the main reason why our legislative bodies are composed of inexperienced men. A careful analysis of State legislatures will probably show that, in the average election, one-half the representatives are new men, with no legislative experience.¹

We are unable to see that any evidence is offered of the adequacy of the cause assigned, or that election by general ticket offers any prospect of correcting the evil. In Chapters XVIII. and XXIII. has been offered a different explanation. The reader will judge of their respective force.

Speaking of a plan for the reorganization of Paris, Mr. Albert Shaw says : ²—

The elections were to be upon a general *arrondissement* ticket—a great improvement upon the present plan of “uninominal” election in quarters, which necessarily fills the council with obscure men (p. 18).

And again : —

Election upon a general *arrondissement* ticket, harmonizing with the general municipal system of France, would result in greatly improving the average quality of the council. I am inclined to the opinion that it would be still better to elect a portion of the council upon a general ticket for the whole city, with the idea of securing men of acknowledged note and standing as candidates (p. 21).

We do not find any evidence given either in logic or practice in support of these conclusions. Our contention is that the qualities and fitness of men must be tested inside and not outside of the council ; that the voters cannot be expected to discover but only to recognize them ; and that they can do this much better where their attention is concentrated upon a single and direct representative instead of a greater number, in whom they have only a fractional interest and share.

¹ *Op. cit.*, pp. 40–42.

² “Municipal Government in Continental Europe.”

"Time was," says Woodrow Wilson,¹ "in the infancy of national representative bodies, when the representatives of the people were called upon simply to give or to refuse their assent to laws prepared by a king or by a privileged class in the state; but that time is far passed. The modern representative has to judge of the greatest affairs of government, and has to judge as an originator of policies. It is his duty to adjust every weighty plan, preside over every important reform, provide for every passing need of the state. All the motive power of government rests with him. His task, therefore, is as complex as the task of governing, and the task of governing is as complex as is the play of economic and social forces over which it has to preside. Lawmaking now moves with a freedom, now sweeps through a field, unknown to any ancient legislator; it no longer provides for the simple needs of small city-states, but for the necessities of vast nations, numbering their tens of millions."

The modern legislator must, therefore, be well equipped. He must give the greater part of his time to parliamentary duties, and above all must have a long experience in his particular art. No more striking evidence of obsolescence can be cited than this, that while the duties of legislation have increased as never before, the lawmakers themselves have sunken into incompetence and obloquy.

There could be no stronger illustration of our main principle. It is because all government has been concentrated in the legislature without executive guidance, that those qualities are supposed to be necessary in the members. But they have not been and never can be obtained, and if they could they would be useless, on account of the absence of discipline, the anarchy of such a body. What is required is to go back to the principle stated in the sentence first quoted from Mr. Wilson, only substituting for the words "king" or "privileged class" a single executive head, elected by the people, going back to them at short intervals for approval or rejection, and held to constant public responsibility by open discussion in the legislature.

Take again the following : —

In colonial times parties were unknown. Or rather, we might say, there was a court party, or a party of prerogative, represented by the

¹ "The State," New York, 1890, p. 583; quoted by Mr. Commons, p. 33.

governor and his council, while the legislatures, the representative bodies, stood practically for a united people. The upper House being appointed by the governor, the lower House was drawn together as a single unit, representing all the people. No matter from what county a representative was returned, he was the ablest man in the county, for the people were unanimous in their wishes to withstand the party of prerogative. Furthermore, the districts were all alike, being exclusively agricultural, and the representative from one was in harmony with the people of the others. There was no minority in any district to be unrepresented by a delegate chosen by the majority.

But to-day the legislature, whether in city, State, or nation, instead of being the organized representatives of those who protest against the government, is itself the government. Within its walls occur the struggles for the control of the fortunes and destinies of the people. There is no outside enemy whose constant presence enforces harmony and mutual help. Two national parties stand face to face in constant conflict, and whichever masters the legislature masters the people...¹

This last paragraph describes the evil which has fallen upon the whole country; namely, the absorption of all power by the legislature. It is to be remedied, not by changing the character of representation, but by the restoration of the executive to the condition described in the first paragraph, except that, instead of a court party or party of prerogative, the governor should be the chosen agent of the majority of the whole people, and that the ablest men should be sent by the people, not to "withstand" him, but to watch him and to insure and make clear to the people that he governs rightly.

The significant feature of the district system is not only the fact that voters have a choice only between the candidates of the dominant political parties; it is also significant that a very small proportion of voters hold the balance of power between these two parties. In the congressional election of 1890, which substituted a Democratic majority of 127 for a Republican majority of 3, this result was brought about by a change of only five per cent. of the total vote, the Republicans losing that proportion, and the Democrats gaining only two per cent. On the other hand, the election of 1894, which turned a Democratic majority of 79 into a Republican majority of 134, was the work of 9.1 per cent. of the voters, who abandoned the Democratic party.

¹ Commons, "Proportional Representation," p. 28.

In the Massachusetts Senate elected in 1891 a change of less than five per cent. from the vote of those elected to the candidate in their respective districts who received the next highest vote would have defeated every member of the Senate, and a change of less than one and one-third per cent. of the vote in twenty-one districts would have made the State Senate Democratic instead of Republican.

Professor Giddings¹ asserts that "the total possible gain or loss to a political party through strictly independent voting does not exceed, under the most favorable circumstances, five per cent. of the maximum total vote of a presidential year." This statement is sustained by even the unprecedented "landslides" of the past six years.

It is in the exaggerated weight of small factions holding the balance of power between the two parties that is to be found the secret of the corrupt influences already described. The great majority of the voters are conservative, and do not readily change their party. Especially in close districts, therefore, interested elements can dictate terms to both parties. This, too, gives the bribable vote an influence far in excess of its proportion. The single-membered district, therefore, places a magnificent premium upon bribery.²

Upon this there are several comments to be made: —

1. It involves the whole question of majority and minority as against plurality. The argument for the former is, that as to nearly all public questions it is more important that they should be settled, at least for the time, instead of being kept in a state of constant agitation and uncertainty. As previously remarked,³ if any question is settled by a very small majority it merely means that that question does not excite interest enough among the voters to call out strong feeling beyond party lines; and this, unfortunately, is the case with almost all questions, under our political system of carefully concealing everything from the eyes of the people. The remedy is to excite strong feeling by personality, subjected to the test of public debate. Mr. Commons intimates also that the balance of power is held by the bribable portions. The question of bribery would itself be sufficient to create a

¹ *Political Science Quarterly*, Vol. VIII, p. 117, "The Nature and Conduct of Political Majorities."

² Commons, pp. 78-80.

³ Chap. XXIII.

large majority the other way, if the opposition were led by a strong personality, denouncing and proposing definite means of preventing it; instead of its being merely a general subject of lamentation by press, pulpit, and college chair.

2. It seems extremely ingenuous to suppose that the possibility of bribery would disappear with the establishment of a general-ticket system. We will suppose a case. Mr. Commons says:—

Nominations can be made by petition. Municipal leagues, civic federations, business men's associations, chambers of commerce, labor unions, have their completed organizations. These can nominate their tickets by petition or can indorse those already nominated. As in English cities, where it requires but eight signatures to nominate a candidate for the municipal council, the matter would adjust itself, and there would be no danger from the multiplicity of candidates or tickets.¹

The last is a bold assumption, as there would be a very great danger. It seems fair to suppose that the more the voters were divided by numerous nominations, the smaller would be the number of votes required for an election. Suppose a corrupt combination were to employ agents to get up separate nominations for every kind of separate theory which could find followers and then to stir up the different groups to support those nominations, while they themselves were using their resources to swell their own fraction with its reduced requirements. This would be only an exaggeration of what we have seen to happen in New York in an election by plurality.

How far Mr. Commons relies upon his imagination for his premises may be seen from the following, based upon the supposed adoption of proportional representation:—

The first effects of every innovation are always viewed with alarm. So accustomed are we to the workings of existing institutions that

¹ Commons, p. 156.

though we acknowledge their imperfections and injustice, we rather cling to them than risk the imagined incidental results that may flow from the triumph of justice and fairness. Our principal difficulty is our failure to perceive that a far-reaching reform, which strikes at the root of existing evils, brings with it a series of changes which harmonize with it. We assume that under the new system all conditions, except the mere mechanical improvement, will remain the same as they were before. At first, indeed, the people might not fully understand the innovation, and shrewd schemers might take advantage of their ignorance; but soon they will comprehend it and will adjust their actions to it. It does not follow that, with proportional representation, third parties, composed of so-called "cranks," "faddists," "impracticables," "anti-vaccinationists," repudiationists, or what not, would increase in size, and continuously hold the balance of power. A few able men of noble humanitarian, though visionary, ideas in every assembly would be an actual gain. But if their views are truly impracticable and unjust, nothing will so demonstrate the fact to them and their followers as the responsibility for practical legislation, and the hard contact with other views upheld by men of ability in legislative halls. Idealist reformers would send their ablest spokesmen. Other parties in self-defence would be compelled to do the same. The representative assembly would become the great forum of the people. Its debates would command attention. It would educate the nation. Reformers would see that their cause is strengthened, not by sending eccentrics to Congress, but by sending capable, all-round men. At present, having no representation whatever, only their extremists can attract attention. The very nature of reform movements would change. There are many sensible citizens who to-day would gladly see political and industrial conditions improved, but who find no place in the dominant party organizations, and are distrustful of the extreme reform organizations, and are therefore enrolled in that army of nearly half the voters who stay at home. These men would take an active interest in politics, and would modify by their new-found influence the personnel of both the new parties and the old. In these ways the balance of power would be held, not by "faddists," but the solid, patriotic, disinterested citizenship of the country.¹

It is needless to point out that all this reasoning proceeds upon pure assumption. It ignores entirely the badly adjusted relation of legislative and executive power. It rejects all idea of discipline and leadership and upholds government by a mob, which is just the same in principle,

¹ Commons, pp. 183, 184.

whether composed of the rich and educated or the poor and ignorant. What we insist upon is that such a composition of forces would produce either a deadlock or a perfectly fluctuating and unstable administration. For decent government there must be a definite and firm policy, approved or disapproved and changed by public opinion.

3. It may well be maintained that it is better for a small fraction of the voters to hold the balance of power than for a corresponding fraction of members in the legislature; that the wrangling and manifest trading in the latter case would be more demoralizing to public opinion; that with a legislature, as with an executive, you cannot have responsibility unless you give power; that there should be a decided party majority, based not upon particular measures but upon general policy,¹ and held to public responsibility by a minority through the firm control of an impartial presiding officer; and that in this way the majority of the nation would be turned from one side to the other according to the march of events; in short, that majority and minority, in and for themselves, are the first requisite of popular government and not the development or representation of separate groups. This is the perfectly natural reason why the names of Conservatives and Liberals in Great Britain, and Republicans and Democrats in the United States, hold their sway through long terms of years even after they seem to have lost all definite meaning.

In fact this difficulty suggests itself to Professor Commons.

The objection against proportional representation has just been cited that it would nullify party responsibility. It is said that it would do this by giving a small minority the balance of power and

¹ The idea is nearly expressed in the homely adage that "If two men ride one horse one must ride behind."

enabling it to dictate legislation. This would weaken the government and prevent a consistent policy. We have frequently noticed the very close popular vote as between the two great parties, neither of them receiving a majority. Third and fourth parties, therefore, if given their proportionate weight in legislation, would often hold the balance. Of course, with the existing system, they already often have this advantage, but with proportional representation the same would more frequently happen. The weight of this objection, the most serious yet presented against proportional representation, varies in different grades of government (p. 171).

The obstacle, since the argument is insuperable, is usually met by an appeal to abstract justice.

In the first place the objection overlooks the principle of equality and justice in representation. It may prove here, as elsewhere, that justice is the wisest expediency (p. 172).

To which it may be replied that such an arrangement is very far from being just. It assumes that society is divided into a number of groups, each of which has decided opinions and wants an opportunity to present its views and have them attended to. The fact is that the great mass of the people have no "views" at all. They merely want to be well governed, and left as far as possible to attend to their own business. Justice requires, therefore, that they should have the fullest opportunity of selecting the executive power which does the governing, and of securing the fullest guidance and information through the watchfulness and the debates of a legislature. To hand over the whole government to a legislature and make that an arena in which separate factions are contending for supremacy is the height of injustice to the whole people. On the contrary, it is protection against these which justice demands.

Mr. Commons finds the danger of this kind in two directions : —

The argument, however, of those who fear that third parties will hold the balance of power is not based solely on a dread of the cor-

rupt classes, but rather of the idealists, the reformers, "faddists," and "cranks" so called. They would retain exclusive majority rule and party responsibility in order to prevent the disproportionate influence of these petty groups. They overlook, of course, the weight of the argument already made, that individual responsibility is more important for the people than the corporate responsibility of parties (p. 173).

We have endeavored to show that under a government by legislature individual responsibility cannot be reached by any system of representation.

It is a serious evil of the existing system that the two industries most largely represented in municipal councils are those of the saloon-keepers and the gamblers. Far better would be a system which reduces their representation to the same proportions which their numbers bear to the whole community. The corrupt and dangerous classes are a very small minority of the people, but by their well-chosen methods they get majorities in our legislative bodies. Proportional representation would give them a hearing, for they are entitled to it, but it would deny them supremacy (p. 173).

Is that so certain?

But Mr. Commons has another outlet of relief from contending factions:—

The fundamental nature of legislation is not party victory but compromise. Compromise is expediency. Expediency is nothing more nor less than ideal principles and institutions in process of realization. . . . The different classes and interests come together in the legislative halls. The circumstances of the time compel change. The radicals demand extreme measures. The conservatives resist. If, now, the system of representation is such that neither has a majority in the legislature, but the overwhelming majority of the people who hold moderate views is adequately represented and holds the balance of power, compromises will result. Measures will be examined, debated, amended, until they reach the shape which will command a majority of the votes (pp. 177, 178).

In government there are two kinds of compromise. In the one case we may suppose that a certain measure has been carefully prepared by the executive branch under a full sense of responsibility to the whole people and for

the collective administration of the government, and has been submitted to the legislature. In the course of debate it appears that there are certain features which cannot meet with acceptance. The government modifies them until the amended measure can obtain a majority, or stands firm till a new election decides for or against it. That is the kind of compromise which was adopted in the first English parliamentary reform,¹ and which we have contended should and might, with responsible executive government, have been resorted to in the anti-slavery struggle with the South. The other kind is when in a legislature certain fractions, whether dishonest and selfish, or conceiving that the public welfare is identified with their "views," are determined to block all business by any kind of parliamentary tricks or intrigue until their wants are attended to. It is this kind of compromise which is so rife in Congress with tariff and silver and all kinds of private schemes, and with corporate and personal interests in State and city politics, and no proof is given that it would not prevail under proportional representation, as much as, if not more than, it does now.

It is curious to note that most of the plans for escaping from the single-district system have been in turn abandoned or condemned as unsatisfactory.

1. The general-ticket system, where either the entire representative body is elected on one ticket or the electorate is divided into large fractions, each having several members, and each elector having in both cases as many votes as there are members to be elected.

In this way the majority gets the entire list, and the minority is wholly unrepresented. . . . Representatives to Congress in the first half-century of our constitutional history were elected by this system. Each State sent to Congress a solid delegation of one party or another, elected either by the State legislature or by popular vote. So unjust

¹ Cf. Chap. VI.

did the method prove to be, that gradually the single-member district was substituted by individual State action, and finally Congress, in 1842, made the latter obligatory in all States.¹

The election of members to the Chamber of Deputies in France in 1885 was conducted on the general ticket, *scrutin de liste*, but

the general ticket was abandoned in 1889, after the trial at this one election, and the French method at present is the same as that of other countries.

The general ticket presents exactly the same fault as the single-membered district, — it divides the voters into two camps with no representation of the minority, and commits the control of elections to the party machines. Its only difference is that it makes the area of election larger (p. 89).

2. The limited vote, where, if there are three candidates, the voter can only vote for two ; or if, as in Boston, there are twelve candidates for aldermen, each elector votes for only seven.

It will be seen from the above return that the limited vote creates an artificial representation of the two dominant parties, and permits no representation whatever of minor parties and independent movements. . . . The limited vote is an interesting example of the way in which the very classes against whom a reform movement is aimed may divert it to their profit. . . . The general ticket has been shown to be crude, even barbarous, in its destruction of minorities. The limited vote is less barbarous, but it does not widen the field for independence (pp. 91, 92).

3. The cumulative vote, according to which

the elector has as many votes as there are representatives to be elected, but he may dispose of them as he pleases. Not only may he distribute them one by one among the candidates of one or all parties, as in the general ticket or limited vote, but he may accumulate them upon one or more candidates. . . . With the cumulative vote very much depends upon the size of the districts. If they are small, as in the election of representatives to the lower branch of the Illinois

¹ Commons, pp. 86, 88. Compare what is said in Chap. XVI. as to the presidential electors.

legislature, the result differs but little from the limited vote. . . . The system was adopted in Illinois in 1870, and has therefore had a trial of twenty-five years. Testimony as to its practical workings will throw light upon the problem before us (p. 92).

From answers to inquiries addressed to Illinois editors, and from other sources, Mr. Commons concludes that,

it appears that representatives of third parties in Illinois do not, as a rule, secure election. . . . The elections are therefore confined as in the limited vote to the candidates of the two dominant parties. . . . The quality and ability of representatives are no better than under the old system. In close districts where four candidates are nominated there may be a slight improvement; but in other districts, where a nomination is equivalent to election, the worst elements get control and bid defiance to the people. There are frequent "deals" between parties, the minority agreeing to put up one man, and the "gang" in both parties controlling the primaries. . . . The cumulative vote, whether in small or large constituencies, must involve either waste and guesswork or extreme dictatorship of party machinery (pp. 93-98).

4. The single transferable vote, known as the Hare system. As the advocates of proportional representation are pushed from one position of defence to another their devices become more complex, presupposing a degree, not merely of intelligence, but of attention and study on the part of the voters which we have argued that the best part of them cannot and will not give, the whole management being thus thrown into the hands of groups which have some personal or party end to accomplish.

The "single transferable vote," as its name would indicate, allows each elector to vote for but one candidate, instead of the entire number to be elected, but permits him to indicate second and third choices. The total number of votes cast is therefore the same as the number of valid ballots, which, divided by the number of members to be elected (or number of members plus one), gives the unit or quota of representation necessary to elect a single representative. Each voter marks his ballot with the figures 1, 2, 3, etc., opposite the names of candidates in the order of his preference. In counting the ballots at first only the first choices are counted, and as soon as a candidate has received a number of first choices equal to the quota

he is declared elected. After that no more votes are counted for him, but remaining ballots which give him first choice are counted for the candidates marked second choice, or if the second choice be declared elected, then for the third choice, and so on. After the ballots have been gone over once in this way, and it is found that the full number of members is not elected, as would usually be the case, then candidates whose total vote, either by way of first or secondary choices, is less than a quota, are declared "out," in the inverse order of their vote, and their ballots are transferred to the successive choices indicated thereon, until the complete number of members is declared elected (p. 100).

Imagine the average voter with a list in his hands of perfectly colorless names — that being, as we have maintained, the effect of our whole political system — and trying to select from them his first, second, and third choice.

But even so there are defects.

There is a practical difficulty, almost insurmountable, in the application of this system to large constituencies in the fact that all the votes of the entire constituency must be brought together to the central bureau for counting. They cannot be counted by the various precinct officials, leaving only the totals to be handled by the central board. The Hare system doubtless works well in a constituency of a thousand voters, as in the Mechanics' Institute of San Francisco, where it has been successfully employed in three elections, or in constituencies electing only three to seven candidates by a restricted suffrage, as in the Danish law of M. Andrae; but when ten thousand, or a hundred thousand, or a half million votes are to be counted, and a large number of the ballots must be recounted to make the proper transfer, the task is too heavy.¹

The Hare system is advocated by those who, in a too doctrinaire fashion, wish to abolish political parties. They apparently do not realize the impossibility of acting in politics without large groupings of individuals, nor do they perceive that the Hare system itself, though apparently a system of personal representation, would, nevertheless, result in party representation. . . . With the present organization of parties in the United States, and with the customary method of printing party tickets on the so-called Australian ballot, there is reason to believe that the Hare system would be forced into the service of parties (pp. 104, 105).

¹ To which must be added the opportunities for corruption in falsifying the count.

5. One more attempt is made to steady the dizzying whirl. The total number of votes being divided by the number of candidates to be elected, the quotient is again used in dividing the party totals, a member being given for each unit and the largest remaining fraction. Parties being thus provided for, individuals are selected by taking those of the whole party nomination who get the most votes. But still this plan halts.

But as a practical instrument for a scheme of proportional representation, it presents serious difficulties. Like all of the plans for minority representation that have been examined, as well as the existing single-member district, it is based, primarily, upon the theory that the voter casts his ballot for individual candidates and not for a political party. This is the primitive theory of representation, which, as we have seen, emerged from the primary assembly through the instrumentality of proxies. Based, however, upon this earlier theory the modern voter approaches the election with the idea of his political party uppermost in his mind. He votes for persons because they are the nominees of his party. The personality of the candidates is a secondary consideration (p. 108). . . . In 1875 the Swiss Association, therefore, abandoned the double vote for party and for candidates within the party, and advocated a combination of the cumulative vote and the free ticket. The voter was to have as many votes as there were deputies to elect, and he might cumulate them as he saw fit. However, to avoid the wasted votes of the crude cumulation, the free-list feature was added; and it was provided that the total number of votes given to individual candidates on the respective tickets were to be added together to determine the share of representation which the parties as such should have (p. 112).

It must again be observed that all these plans aim only at modifying the character of the legislature. They do not in any way touch the question of the absorption of all the power of government by the legislature.

The people among whom proportional representation has been adopted most extensively is that of Switzerland, and its result is discussed in the chapter upon that country. In England and the United States partial experiments have been made, and for the reasons which Mr.

Commons has himself furnished, with not very satisfactory results. The subject has been considered here with a desire to point out its untrustworthiness as an instrument of political reform.

A somewhat kindred experiment, which is gravely urged, is that of compulsory voting to obviate the large number of abstentions. It seems clear, that while such a measure might increase the number of votes, it would depreciate their character. The value of universal suffrage depends upon its being regarded at once as a privilege and a moral duty. When once required by law it would be regarded as a mere form, and votes would be cast with recklessness and indifference, and with increased apathy as to candidates. Even those who now vote conscientiously, feeling that they had to encounter a forced element, would lose courage. Votes, again, which were cast under pressure of law, would be much more open to bribery, and soon be estimated by the market value. The most comprehensive statement is, that public opinion, like an army, must be led and not driven. The same argument applies to compulsory office-holding, among the advocates of which is Mr. Charles Francis Adams, in the *Forum* magazine for November, 1892. He refers to examples of a hundred years ago. Thus John Adams, then a young lawyer, was nominated in March, 1761, as a highway surveyor and, on remonstrating with the friend who did it, was told that it was to save him from being nominated as constable.

I said they might as well have chosen any boy in school, for I knew nothing of the business; but since they had chosen me at a venture, I would accept it in the same manner, and find out my duty as I could.

There is a difference between a time when men in taking office thought only of serving the public interest, and a time when there is sharp competition with those

who are seeking it for their own. It might be possible to compel a man to accept office without insuring that he would do the kind of work which modern conditions require. The old adage says that one man can lead a horse to water, but two cannot make him drink. If, for reasons already shown, public office is a place where no reputation can be won and much may easily be lost, compulsion could not be justified. It would be rather hard to threaten a man with fine and imprisonment for refusing to take a share in the government of a city, and then to dismiss him with obloquy if it was not governed well.

Among the resources employed in Europe to overcome the evils of universal suffrage, may be mentioned that of plural voting; that is, giving additional votes to certain classes according to wealth, education, or position. Inasmuch as it may be assumed, however, that such claims, any more than property qualifications in general, will never be adopted in this country except through military force as the result of an armed conflict, it is hardly worth while to discuss it.

Another expedient for improving the quality of legislatures, or indeed of executive boards, is to renew them in fractions, a portion retiring each year. Of course the reason, and it is of undoubted force, is in the advantage of transmitted experience, but this gain is more than offset by the failure in the most efficient application of the force of public opinion. If, according to present practice, all that the voters have to do is to elect the legislature on the general character of the men, and then the public business is to be delivered over to that body, to be conducted by their own light and at their own discretion, then, no doubt, the guidance of some members of experience is indispensable. But if the watchfulness and the interest of the voters are to be kept alive, they should be made to feel that it depends upon them to maintain or change

decisively the character of the body at each election. And this is especially true if the conduct of business is in the hands of a single executive head with a corps of assistants of his own choosing, so that the legislature or council does not need to possess administrative experience, but only to consist of men of intelligence and acuteness in watching and criticising the executive conduct; the people being thus in a position to pronounce with clear decision between them or in approval of both. We have seen that the Paris municipal council is renewed as a whole, and French logic in this respect is not at fault. The same reasoning applies to having one or two branches of a city council. If the city affairs are left to the initiative of single members or committees, and for decision to the whole, the two branches may be a necessary check upon each other; but if the initiative lies with the mayor and his chosen heads of departments, then one branch is better and more fitted to hold the executive to responsibility and to keep public opinion informed.

As regards the much-vexed question of woman suffrage, it is not necessary for the present purpose to discuss whether such a measure is just or expedient in itself. It certainly would do nothing to remedy the defective organization of the legislature, the chaos and confusion which result from the combined absorption of executive power by that body, and its inability to wield it. In fact, the change could hardly fail to increase the difficulty by multiplying the separate interests and groups which are the expression of failure in government by legislature.

An interesting development of effort to escape from the evils of legislative government appears in the various forms of what Mr. Bryce calls "Direct Legislation by the People." His language is so pertinent to the present discussion that we do not hesitate to quote it at length.

The difficulties and defects inherent in the method of legislating by a constitution are obvious enough. Inasmuch as the people cannot be expected to distinguish carefully between what is and what is not proper for a fundamental instrument, there arises an inconvenient as well as unscientific mixture and confusion of private law and administrative regulation with the frame of government and the general doctrines of public law. This mixture, and the practice of placing in the constitution directions to the legislature to legislate in a certain sense, or for certain purposes, embarrass the legislature in its working by raising at every turn questions of its competence to legislate, and of the agreement between its acts and the directions contained in the constitution. And as the legislature is seldom either careful or well advised, there follows in due course an abundant crop of questions as to the constitutionality of statutes, alleged by those whom they affect prejudicially in any particular instance to be either in substance inconsistent with the constitution, or such as the legislature was expressly forbidden by it to pass. (a) The habit of putting into the constitution matters proper for an ordinary statute has the further disadvantage that it heightens the difficulty of correcting a mistake or supplying an omission. The process of amending a constitution, even in one specific point, is a slow one, to which neither the legislature, as the proposing authority, nor the people, as the sanctioning authority, willingly resort. Hence blemishes remain and are tolerated, which a country possessing, like England, a sovereign legislature would correct in the next session of Parliament without trouble or delay. (b)

It is sometimes difficult to induce the people to take a proper interest in the amendment of the constitution. In those States where a majority of all the qualified voters, and not merely of those voting, is required to affirm an amendment, it often happens that the requisite majority cannot be obtained owing to the small number who vote. This has its good side, for it is a check on hasty or frequent change. But it adds greatly to the difficulty of working a rigid or supreme constitution, that you may find an admitted, even if not very grave evil, to be practically irremovable, because the mass of the people cannot be induced to care enough about the matter to come to the polls and there deliver their judgment upon it.

These defects are so obvious that we are entitled to expect to find correspondingly strong grounds for the maintenance, and indeed the steady extension, of the plan of legislating by and through a constitution. What are these grounds? Why do the Americans tend more and more to remove legislation from the legislature and intrust it to the people? (c)

We could quite well imagine the several State governments working without fundamental instruments to control them. In a federal

government which rests on, or at least which began from, a compact between a number of original separate communities, the advantages of having the relations of these communities to one another and to the central authority defined by an instrument placed beyond the reach of the ordinary legislature, and not susceptible of easy change, are clear and strong. Such an instrument is the guarantee for the rights of each member placed above the impulses of a chance majority. The case is quite different when we come to a single homogeneous community. Each American State might now, if it so pleased, conduct its own business, and govern its citizens as a commonwealth "at common law," with a sovereign legislature, whose statutes formed the highest expression of popular will. Nor need it do so upon the cabinet system of England. It might retain the separation from the legislature of the executive governor, elected by the people, and exercising his veto on their behalf, and yet dispense altogether with a rigid fundamental constitution, being content to vest in its representatives and governor the plenitude of its own power. This, however, no American State does, or has ever done, or is likely to do. And the question why it does not suggests a point of interest for Europeans as well as Americans. (*d*)¹

a. A notable illustration of this appeared in the case of the legal tender paper money or 'greenbacks.' Some years having elapsed after the close of the war, and Congress having shown itself wholly unable to deal with the question, — as indeed it has done for nearly thirty years since, — an attempt was made to produce a sort of dynamite explosion of the whole system, by inducing the Supreme Court to declare it unconstitutional from the start. It seems evident that a decision to that effect must have had one of two results. Either the greenbacks would have gone serenely on their way, regardless at once of the court and Constitution, or there would have been a financial crash going far to produce revolution. Great was the wrath of the so-called conservative element when the Supreme Court, in consequence of the appointment of a single judge by President Grant, acknowledged its inability to make facts conform to the Constitution by interpreting the Constitution in accordance with the facts.²

¹ "American Commonwealth," Chap. XXXIX., p. 446.

² Cf. Chap. XXXI.

b. We should amend this sentence by reading, 'possessing a legislature under strong executive guidance and control.'

c. Here again we reply, that the Americans, having wholly lost sight of the fact that the first requisite of good government is strong executive guidance and control, and having experienced only confusion and anarchy in government by the legislature, instead of seeking the remedy through greater concentration of power and responsibility in the executive, have turned for relief to still greater chaos and confusion in the guidance of legislation by the people.

d. We find the point of interest somewhat differently from Mr. Bryce. The people in the beginning handed over the plenitude of power to the representatives and the governor. But having an inherited and excessive dread of the office of governor, which prevented their seeing the difference between such an official appointed by the British Crown and one chosen by themselves, they made no adequate provision for defining or defending his separate power. The representatives proceeded to exercise not only their own but his proper powers, and, to use a popular phrase, they made a mess of it. But as during this process the executive had disappeared from the public view except as a kind of ornamental appendage, while the people saw the evils of legislative government, they did not see that the true remedy lay in strengthening the executive against the legislature, on the principle by which, in the fifteenth, sixteenth, and seventeenth centuries, the peoples of Europe took sides with the royal power to escape the calamities caused by a contending feudal nobility. The case was made more difficult by the fact that the people had come to regard the legislature as the whole of government, and looked to it as the only agency for accomplishing anything which needed to be done, a state

of mind which the legislature was not slow to encourage. To make the matter complete it was only necessary that the governor should take the same view as the people, should regard himself as the mere instrument of the legislature, and passively await orders from it : a process which was greatly facilitated by the circumstance that, the office representing not something to do but something to get, men of corresponding qualities gravitated towards it.¹

When, therefore, the legislature came to get wholly out of hand and to carry on the government by the methods we have seen, the people, in the absence of other leaders and guides, began to take legislation, which they supposed to be government, into their own hands. Mr. Bryce points out that in the United States the method adopted was quite different from that in Europe.

Instead of, like the Swiss, submitting ordinary laws to the voters after they have passed the legislature, the Americans take subjects which belong to ordinary legislation out of the category of statutes, place them in the constitution, and then handle them as parts of this fundamental instrument. They are not called laws, but laws they are to all intents and purposes, differing from statutes only in being enacted by an authority which is not a constant but an occasional body, called into action only when a convention or a legislature lays propositions before it.

I have already explained the historical origin of this system, how it sprang from the fact that the constitutions of the colonies having been given to them by an external authority superior to the colonial legislature, the people of each State, seeing that they could no longer obtain changes in their constitution from Britain, assumed to themselves the right and duty of remodelling it, putting the collective citizenship of the State into the place of the British Crown as sovereign. The business of creating or remodelling an independent commonwealth was to their thinking too great a matter to be left to the ordinary organs of State life. This feeling, which had begun to grow from 1776 onwards, was much strengthened by the manner in which the Federal Constitution was enacted in 1778 by State conventions. It seemed to have thus received a specially solemn ratification ; and even the Federal legislature, which henceforth was the centre of national

¹ Cf. Chap. XVIII.

politics, was placed far beneath the document which expressed the will of the people as a whole.¹

But the work did not stop here.

Instead of being stimulated by this distrust to mend their ways and recover their former powers, the State legislatures fell in with the tendency and promoted their own supersession. The chief interest of their members, as will be explained later, is in the passing of special or local acts, not of general public legislation. They are extremely timid, easily swayed by any active section of opinion, and afraid to stir when placed between the opposite fires of two such sections as, for instance, the prohibitionists and the liquor-sellers. Hence they welcomed the direct intervention of the people as relieving them of embarrassing problems. They began to refer to the decision of a popular vote matters clearly within their own proper competence, such as the question of liquor traffic, or the creation of a system of gratuitous schools.²

We have now reached the second grand panacea which, by the side of proportional representation, is urged as a cure for the evils of legislative government, and which, by a device quite familiar in the case of patent medicines, is known by the formidable name of "referendum." It is most distinctly known as a Swiss institution, and as such will be treated of in connection with that country. It is here considered in its relation to the United States. And first a clear distinction should be made between constitutions containing general principles of government approved by the people, and particular statutes. The former, at considerable intervals and with due solemnity, may well be submitted for the stamp of popular approval, when the latter may mean nothing more than confusion and weakness of government.

There has been, within recent times, a radical change in our ideas in regard to State constitutions and our conceptions as to what matters are suitable for a place in these instruments. At the beginning they were, as constitutions are supposed to be, statements of the fundamentals of government. They included, in the first place, a bill of

¹ "American Commonwealth," Chap. XXXIX., p. 450.

² *Ibid.*, p. 461.

rights—a declaration of personal privileges—which were to be guaranteed to the citizen, and which the government was at no time to abolish or abridge. They included, further, a scheme of public management and administration. They put the legislative, the executive, and judicial powers in the custody of certain specified agents, and prescribed in a general way the methods which should be used by those agents in exercising their respective duties. They provided for the organization of the legislature, the appointment or election of the governor and other executive officers, and the establishment and maintenance of the courts; and here the scope of the constitutions was thought to have reached a limit. Now, however, very different constitutional standards obtain, and in the States of every section of the country the same tendency is visible, until we have to-day come to a point where our State constitutions are nothing short of codes of law, giving instruction to the legislature and the other agents of government on nearly every subject of general public concern, and often stating the methods which shall be used in legislating, if not indeed actually legislating, on local questions.¹

Another writer of authority says:—

Our whole political system rests on the distinction between constitutional and other laws. The former are solemn principles laid down by the people in its ultimate sovereignty; the latter are regulations made by its representatives within the limits of their authority, and the courts can hold unauthorized and void any act which exceeds those limits. The courts can do this because they are maintaining against the legislature the fundamental principles which the people themselves have determined to support, and they can do it only so long as the people feel that the constitution is something more sacred and enduring than ordinary laws, something that derives its force from a higher authority. Now if all laws received their sanction from a direct popular vote, this distinction would disappear. There would cease to be any reason for considering one law more sacred than another, and hence our courts would soon lose their power to pass upon the constitutionality of statutes.²

The following decisions of courts are quoted, not as such, because there are numerous decisions on the other side, but as political arguments.

¹ Oberholzer, "The Referendum in America," p. 42. See also Appendix B of this book.

² A. Lawrence Lowell, "Government and Parties in Continental Europe," Vol. II, p. 298.

If the legislature can refer one subject, it can refer another to popular legislation. There is scarcely a case, where much diversity of sentiment exists and the people are excited and agitated by the acts and influence of demagogues, that will not be referred to a popular vote. The frequent and unnecessary recurrence of popular elections, always demoralizing in their effects, are among the worst evils that can befall a republican government; and the legislation depending upon them must be as variable as the passions of the multitude. Each county will have a code of laws different from the others; murder may be punished with death in one, by imprisonment in another, and by fine in a third. Slavery may exist in one and be abolished in another. The law of to-day will be repealed or altered to-morrow and everything be involved in chaos and confusion. The general assembly will become a body merely to digest and prepare legislative propositions, and their journals a register of bills to be submitted to the people for their enactment.

Finally, the people themselves will be overwhelmed by the very ills and dangers against which the founders of our government so anxiously intended to protect them: all the barriers so carefully erected by the constitution around civil liberty to guard it against legislative encroachment and against the assaults of vindictive, arbitrary, and excited majorities will be thrown down, and a pure democracy, the worst of all evils, will hold its sway under the hollow and lifeless form of a republican government.¹

Justice Willard in his opinion says: "If this mode of legislation is permitted and becomes general, it will soon bring to a close the whole system of representative government which has been so justly our pride. The legislature will become an irresponsible cabal, too timid to assume the responsibility of lawgivers, and with just wisdom enough to devise subtle schemes of imposture to mislead the people. All the checks against improvident legislation will be swept away, and the character of the constitution will be radically changed."²

Mr. Lowell also refers to the quantity of our legislation. In Zurich in Switzerland the yearly average of laws submitted to the people was only ten, in Berne only four.³ Our legislators pass four or five hundred statutes in a single session. Of course they cannot all be submitted. How and by what influences should the selection be made?

¹ *Rice v. Foster*, 4 Harr. (Del.) 479.

² *Barto v. Himrod*, 4 Seld. N.Y. 483. Quoted by Oberholzer, pp. 108, 112.

³ *Atlantic Monthly*, April, 1894.

It needs hardly to be said that the whole theory is in exact opposition to the principles advocated in this work. The object of these principles is to improve the character of the legislatures by concentrating executive power and bringing it to bear in discipline and system in the legislature, in clearing up and making public the whole course of procedure both legislative and administrative, and thus arousing and concentrating the mass of public opinion through the development of personality. The referendum does exactly the reverse of this, destroying personality and diffusing responsibility even more than it is now. Upon this point we may quote Mr. Lowell : —

Moreover, the referendum is contrary to our ideas, our habits, and our traditions, and hence could not be expected to work successfully. We are accustomed to depute all ordinary legislation to our representatives and to charge them with the duty and responsibility of making the laws. Our people are not in the habit of weighing the particular merits of particular statutes, or of debating the necessity for the various appropriations. Their experience has been confined to passing judgment upon men and general lines of policy.¹

Mr. Commons says : —

Unquestionably direct legislation in the form of the referendum would serve an important purpose in the present condition of American politics. It would promptly bring all legislative assemblies to a standstill. But, as in Switzerland, it would make them no more attractive than now to the ability and statesmanship of the country. They would be simply advisory committees on legislation, with no responsibility, attracting neither the political leaders, nor enlisting the popular vote at elections.²

And Mr. Bryce : —

What are the practical advantages of this plan of direct legislation by the people? Its demerits are obvious. It tends to lower the authority and sense of responsibility in the legislature; and it refers matters needing much elucidation by debate to the determining of those who cannot, on account of their numbers, meet together for dis-

¹ *Ibid.*

² "Proportional Representation," p. 192.

cussion, and many of whom may have never thought about the matter. These considerations will, to most Europeans, appear decisive against it. The proper course, they will say, is to improve the legislatures. The less you trust them, the worse they will be. They may be ignorant; yet not so ignorant as the masses.

But the improvement of the legislatures is just what the Americans despair of, or, as they would prefer to say, have not time to attend to. Hence, they fall back on the referendum as the best course available under the circumstances of the case, and in such a world as the present. They do not claim that it has any great educative effect on the people. But they remark with truth that the mass of the people are equal in intelligence and character to the average State legislator, and are exposed to fewer temptations. The legislator can be "got at," the people cannot. Nor should it be forgotten that in a country where law depends for its force on the consent of the governed, it is eminently desirable that law should not outrun popular sentiment, but have the whole weight of the people's deliverance behind it.¹

But this is just what it does not do, as the vote on the referendum is almost always small in proportion.

In New York, in 1894, the vote on the revised constitution was only fifty-seven per cent. of the vote cast for governor at the same election; the vote on apportionment (gerrymander) was fifty-nine per cent., and the vote on canal improvement was sixty per cent.

In California, in 1892, the vote on five amendments to the constitution and four propositions ranged from fifty-three per cent. to eighty per cent. of the votes cast at the same election for members of the assembly.

In Ohio a constitutional amendment to tax franchises of corporations was lost three times, although the majorities in its favor were large, simply because the total vote on the question was less than seventy-five per cent. of the total vote cast at the same election for State officers, as required by the constitution.

In Texas, in the summer of 1897, a popular decision was called for on three amendments to the constitution. Though 535,000 persons had voted for a President in the autumn before, less than 100,000 then came to the polls; a striking illustration of the relative force of personality and abstract propositions in assuring public interest.²

In Boston the vote on the rapid transit question in 1894 was less than one-third of all the voters and the

¹ "American Commonwealth," Vol. I., Chap. XXXIX., p. 453.

² "Proportional Representation," p. 187.

question was settled by only one-sixth. There is a constant danger that the most radical and subversive measures may, through a cowardly shirking of duty on the part of executive and legislature and the intrigues of interested parties, be made law by a small minority of the people.

In a former chapter,¹ in illustrating the effect of the executive veto, we have supposed the case of a railway manager, who was obliged to wait passively until the directors, without any intervention on his part, had come to an agreement among themselves as to the running of trains, the rates of passenger and freight traffic, the kind of cars and engines to be used, the number and location of stations, etc., and should then be limited to simple acceptance or rejection of plans thus made and submitted to him in writing. We may now carry this illustration further and suppose that, before these plans of the directors were sent to the manager or put into operation, they should be submitted for approval to a majority vote of the stockholders at meetings called for the purpose. It seems not unfair to adduce this as an example of the referendum.²

It is worth noting that in Great Britain, with its strong executive power, its effective parliamentary control, its wide suffrage, and its responsive public opinion, the referendum has never obtained any foothold. Mr. Bryce quotes two instances which do not fairly come within the category. One is as to local option, that is, whether each town or other local area will grant licenses for the sale of liquor, which, though it has been several times proposed, has not yet been made a law; and the other, that the rejection of a bill by the House of Lords, after it has passed the House of Commons, may be regarded as compelling a

¹ Chap. III.

² See Appendix C, for a practical experiment in the referendum.

dissolution of Parliament, that is, an appeal to the voters. As to the first point we will leave the word to Mr. Lowell.

There remains to be considered the use of the popular vote for local questions. This depends upon quite a different principle. The referendum means an appeal from the legislature to the whole body of constituents who elected the representatives, but in the practice of leaving local affairs to be decided by the voters of the city, town, or county, there is no appeal of this kind. The people of the State, in such a case, are not asked to ratify the act of the legislature, nor can they veto it, for although the vast majority may be strongly opposed to a local option bill, for example, they cannot prevent its becoming a law. The statute acquires a complete validity from the enactment by the legislature, and the only question on which a popular vote is taken is that of the local application of its provisions. With this, the people of the State as a whole have nothing to do, for it is decided in each particular town solely by the voters of that town. Local popular voting is in reality only a method of self-government, whereby additional powers are given to the city, town, or county, and their exercise is intrusted to the whole body of its inhabitants.¹

The argument, of course, applies to many other cases where the voters accept, not the law itself, but its local application.

As to the action of the House of Lords it means, what a dissolution of Parliament has always meant, an appeal with regard to an executive ministry, and even though it may turn, as it often has done, upon single measures, it is still with the great mass of voters a question of persons, and behind them, of parties.

It seems to me also clear that, in a country like England, the referendum could never become an habitual agent in legislation. Perpetual popular votes would be an intolerable nuisance. It should be restricted to constitutional questions altering the disposition of power in the State, with, perhaps, the addition of important questions on which during more than one Parliament the two houses of the legislature had differed.²

¹ Lowell, *op. cit.*

² W. E. H. Lecky, "Democracy and Liberty," Vol. I., p. 242.

The desperate extremities which are resorted to in the effort to remedy the evils of government by legislature appear in what is known as the initiative, which is thus described by Professor Commons.

The unrepresentative character of the legislatures has led to the initiative, whereby the people purpose to draw up their own measures, and have them voted upon without the interference of the legislature. A petition signed by six to eight per cent. of the voting constituency submits the bill to the legislature, which must, in turn, promptly submit it unchanged to the people, though it may express an opinion, or submit also an alternative proposition, if it wishes.¹

To set to work every group and every interest which has a scheme to forward, and, with the proverbial ease with which signatures are obtained, to thrust that scheme upon the legislature, to rebound upon the mass of the people for settlement, seems like the wildest work of a disordered imagination. Fortunately, it appears to have proved an entire failure in Switzerland, and it may be hoped that the United States will be spared the temptation to such an experiment.

¹ "Proportional Representation," p. 190.

CHAPTER XXVII

SOME PHASES OF EXECUTIVE POWER

IN the last chapter were discussed the various expedients for reforming legislatures, based upon the assumption that they make up the government, and that improvement of their membership is the only available resource. Our contention having been that the real cause of failure lies in the false position of the executive and undue encroachment by the legislature upon his proper power, we have now to consider whether any remedies may be available, and how far, from this point of view. Before facing, however, the howl of obloquy and contempt which is sure to greet any supposed advocacy of 'monarchy,' 'despotism,' 'Cæsarism,' 'Napoleonism,' or what seems to be thought to include them all, 'one man power,' it may be well to examine a little farther into the working of some other governments, not including those of England and France, which have already been discussed.

Fortunately, there has appeared a work, covering exactly this ground. It was written in competition for a prize established by Odilon Barrot, and offered by the Academy of Moral and Political Science in Paris.¹ The report of the committee justly says, that there is perhaps no subject in the whole domain of constitutional law more important, or, on the whole, more delicate to treat. In the century's experience of popular government, public attention has been almost wholly absorbed by the representative branch

¹ "Les Ministres dans les Principaux Pays d'Europe et d'Amerique," par L. Dupriez, Avocat a la Cour d'Appel a Bruxelles, Paris, 1892.

—that is, the legislature. Whether this should consist of one chamber or two, the number of each, how they are to be constituted or elected, and by how wide a suffrage, whether minorities should be represented, how the quality and purity of the legislative bodies are to be maintained, — these are the chief topics of interest and discussion. But as to the relations of the executive and the legislature, the respective functions of each, and in general the constitution of executive power, these are things to which it seems almost impossible to attract public attention in this country. And the reason is very simple. All our constitutions are based upon the principle of the separation of legislative and executive power, but none of them defines the limits of these powers. In practice it is left to the legislatures to fix these limits, which they do by reducing the nominal executive to be a cipher or tool in their hands. The executive officers, having no means of resistance, yield without opposition, and the people, hearing only one side, are not aware of the danger. Hence the value of a work which sets forth the executive side of the question.

The English system of cabinet government has grown up silently and almost unperceived during two centuries, and has only within a generation become an object of conscious study and analysis. No doubt it is the result of gradually formed usages; but, as M. Dupriez remarks, that is the case with all constitutions.

The lawmaker can enumerate in a text the rights of the great political powers, regulate their organization up to a certain point, determine the exterior forms of their action; he is powerless to control the exact position of authority which each shall possess. That is a question which can be decided only by the relative strength of the several powers. The constitutional usages alone establish a result of the struggle which inevitably arises between them.¹

¹ p. 9.

It would hardly be possible to condense more perfectly in one paragraph the political history of the United States.

The country known as the kingdom of Belgium had had but a slight knowledge of representative government before the present century. The first experience was in 1815, when it was united with Holland by the allied powers under a constitution which placed the whole power in the hands of the king, without limiting it by ministerial responsibility and with very little recognition of the liberties of the nation. But the unjust partiality shown to Holland, the exasperation of one part of the Belgian people by attacking their religious convictions, and of another part by arbitrary measures, led to the revolution of 1830 and the establishment of a separate kingdom. The new constitution was the exclusive work of a popular assembly elected some weeks after the uprising, was adopted February 7, 1831, and finally established on the 21st of July following by the oath of the new king, Leopold I., who had been invited to the throne and who swore solemnly to maintain and respect it. For sixty years it remained without change, and it is not yet time to pronounce upon the effect of the new revolution.

In Belgium, as throughout Europe, the constitution is based substantially on the English model. There are two chambers, with a ministry composed, in Belgium, of seven heads of departments, who have seats, with the right of speech, in the legislature. The ministry are supposed to be responsible for the government, as the king reigns but does not govern. The question of interest is, how far does the Belgian constitution differ from the English in details, and what is the effect of that difference.

In the first place the monarchy in Belgium is frankly elective. The crown was offered to King Leopold I. on the conditions expressed in the constitution, and though it

was settled upon him and his heirs, there is nothing to prevent a dethronement at any time. In fact, when Louis Philippe was driven from France in 1848, King Leopold sent a message to the chambers that there was no need of a revolution, and if they wished him to abdicate they had only to say so and he was quite ready. His frankness was the truest wisdom, and both houses joined in begging him to remain. Why is it then that, as M. Dupriez points out, the royal power is so much greater relatively than in Great Britain? Partly because the written constitution gives him much wider powers than custom has given to the British Crown, greater, indeed, than have been practically used; and partly because of the personal character of the sovereigns. For more than a century, from George I. to William IV., no English king manifested any serious fitness for governing, and Queen Victoria, while gaining in the highest degree the respect and affection of her subjects, could not as a woman, unless she had been an Elizabeth, exercise the same governing authority as a man. Hence the constantly increasing power of the ministry and of the House of Commons. Belgium, on the other hand, has lived under two princes regardful of the constitutional spirit, but who have taken great interest in public affairs, and have not shrunk from the labor, the cares, and the responsibility of government. This is especially the case with regard to military and foreign affairs. That the combined royal and ministerial power has so far worked successfully shows, in the first place, how much room a parliamentary system allows for the play of political forces, and that the English method is not the only one available. But it is also largely the result of the conditions of suffrage.

Both chambers are on the same basis as regards the electors, the Senate being separated only by the smaller number of its members and by the different qualifica-

tions, at least forty years of age and the payment of \$400 in direct taxes to the state. The pecuniary qualification for voters, that is \$8.50 of direct taxes, has limited the voters to 135,000 in a population of more than 6,000,000, a fact which, whatever else may be said of it, makes government much easier. Up to 1830 the resistance to the supremacy of Holland held all the Belgians together. The Liberals supported the freedom of worship, of education, and of association demanded by the Catholics, and these in turn aided the demand of the Liberals for liberty of the press, ministerial responsibility, and the institution of the jury. After the establishment of the new kingdom, again, the state of foreign relations held the parties together and led to the formation of mixed ministries, made up from both parties. But the plan did not work smoothly, and this period was distinguished by the frequency and intensity of ministerial crises. With 1839 began the division of parties and the creation of accordant ministries, and in 1846 a congress at Brussels fully established the Liberal party with a definite programme.

Parties in Belgium are distinguished by their strong cohesion and strict discipline. No doubt a certain degree of independence and initiative is left to each member, and there are even groups of different shades and tendencies. But these differences are seldom shown in parliamentary discussions and still more rarely in the votes. Opposing views are almost always reconciled in what we should call party caucuses. A deputy who does not wish to follow the line adopted by his friends prefers to avoid a quarrel by intentional absence. This union and discipline of parties are explained by their organization. Each party is represented in every electoral district by a permanent association which looks after the registration of voters, chooses the candidates, determines the programme, disposes of all the means of influence and especially of

the press. These local associations, federated among themselves, obey the impulse of a central committee, which includes the chiefs of each party. There are thus two hierarchies of rival associations, outside of which it is extremely rare that a candidate can hope to secure a seat in the Parliament. A comparison with party organization in the United States at once suggests itself. The difference in result is to be sought in the organization and leadership within the chambers, both of the government and the opposition. Since 1846 the cabinets have been especially stable. Although the king, and therefore the ministry, have the right of dissolving the chambers, it is not exercised, because the chambers do not overthrow ministries, but leave that duty to the electors, in the regular periods of two years, when the popular house is renewed by halves, though the term of senators is for eight years. Of course, if the electors return a majority adverse to the ministry the latter must resign. This leaving of the change of executive to the people instead of the chambers is of interest in relation to the United States.

The Belgian ministers have, *ex officio*, the right of entry into both chambers and can take part in all discussions, but, have a vote only in the assembly of which they are members. They must be heard whenever they demand it, while, on the other hand, the chambers can demand their presence and explanations as to resolutions which have been sent to them. They have the right of being present even in secret sessions of the whole body; but they have no particular right relatively to the meetings of the sections and committees. It is not necessary that the ministers should be members of either house. In fact the minister of war is always a soldier, a general in actual employment, and though the others are usually taken from the houses, there is nothing to prevent the whole

ministry from being made up of outside men of business, their right of entry into both houses being held to cover all requirements, — again a circumstance of importance in relation to the United States.

The king has the right of dissolution of one or both chambers, though he must at the same time order a new election within forty days and assemble the chambers within two months. Evidently this right much surpasses that of the Crown and ministry in Great Britain, who can dissolve only the House of Commons, and forms a powerful instrument which may explain the control over the legislature, notwithstanding the power exercised through its committees. As the king retains and sometimes exercises the right of dismissing single ministers, a defeat of one does not involve the resignation of the whole to the same extent as in Great Britain, a further precedent of interest to the United States.

In Belgium, as in France, Italy, and the United States, and in direct contrast to Great Britain, the struggle for power is between the executive and the committees of the legislature.

The Belgium Chamber of Representatives is divided into six sections, of which the members are renewed every month by drawing lots. They discuss the proposals which are laid before them, but their deliberations are not generally very profound. Each of them names a reporter who represents it in the central section. The latter makes a study of the proposals in detail, and presents to the Chamber a report to serve as a basis for its deliberations. At the commencement of each session the Chamber elects by general ticket two permanent commissions, composed of at least seven members: a commission upon finances and accounts, and one of agriculture, industry, and commerce. Each section names every month one of its members as a delegate to the committee on petitions. Finally, the chambers can establish special committees, whether elected by general ticket, or selected by lot, or named by the president, to deliberate on propositions submitted to it.

The Senate has not adopted the same organization. From the opening of the session it divides itself into seven committees, of

which the members are elected on general ticket, and which correspond each to a ministerial department. It is these committees which prepare the scheme of a proposed law, and name a reporter for each subject. Each committee names two of its members to form a budget committee, and in like manner a member of the standing committee on petitions and naturalization. A standing committee of agriculture, commerce, and industry is elected directly by the Senate, the nine members who compose it being chosen in such a manner that each province may be represented.¹

It will be seen that the Senate committees resemble more closely those of the United States.

The Belgium chambers have most extensive and thoroughly protected rights; legislative power with the right of initiation and amendment; annual vote of budgets, of all taxes, loans, and every grant of money at the cost of the treasury.² The right of initiative belongs both to the government and to every member of Parliament, except that laws relating to the finances or the army contingent must be voted first by the Chamber of Deputies. The ministers never present their plans in their quality of senators or representatives, but always in the name of the king, and generally before the Chamber of Representatives.³

All propositions, whether from ministers or members, are referred first to the sections, and by them after a cursory examination to the central section.

The sessions of this section are private, the only exception being in favor of the authors of propositions who may appear to submit their arguments. The government is not represented there, and takes no part in its labors, even when they are given to ministerial plans. The ministers are excluded from its meetings and are only admitted at the expressed request of the section, when it desires to receive from them information or explanations. They then appear as simple witnesses without taking part in the discussion, and retire as soon as they have answered the questions put to them.⁴

It is evident that here are two rival powers, involving a permanent struggle for mastery; and although "between these two authorities which it has elected and in

¹ Dupriez, Vol. I., p. 232.

² p. 234.

³ p. 241.

⁴ p. 243.

which it has confidence, the ministry and the central section, the Chamber hesitates and follows one or the other, according to circumstances," yet if in fact the ministry retains the advantage, and does not become the sport of groups, as in France or Italy, it must be either on account of the degree of influence retained by the king, or of the very restricted suffrage and consequent severity of party discipline already alluded to.

But this last element promises very speedily to be put to a test. The agitation for a wider suffrage began in 1870 and resulted in the change of the Constitution finally adopted on September 2, 1893. According to it the voters in the first election were increased to 1,363,733, or fully tenfold. A vote was given to every Belgian twenty-five years old, having resided a year in the same voting district, and not disqualified by law. But with this was adopted a system of plural voting. An additional vote was given: 1, to every male of thirty-six years of age, married or a widower, and having legitimate children, and paying to the State at least five francs of personal taxation; 2, to every male twenty-five years old, an owner of real property valued for taxation at 2000 francs, or public debt paying an income of 100 francs, or having certain educational qualifications. But no one was to have more than three votes. Voting was further made compulsory, with results, according to one writer,¹ very much as has been indicated to be probable in a former chapter of this work.²

The returns of the first election in 1894 are of interest.

Having one vote	846,178
Having two votes	293,678
Having three votes	223,877
	<hr/>
	1,363,733

¹ Luis de Lorac, "The Political Situation in Belgium," *National Review*, November, 1894.

² Chap. XXVI.

The result showed that the Clerical party had added eleven to its previous ninety-three seats; the Liberals had lost forty-four of their fifty-nine seats; the Socialists, having had none, gained thirty-three seats. The forecast may be hazarded that the new constitution will entail a great increase in the power of the chambers, with weakening and instability of the executive, involving sooner or later a compulsory restoration of strength to the latter in some form.

The country in Europe in which constitutional monarchy has developed one of the most signal failures is Italy, and both for explanation and warning the causes are of profound interest. The treaties of 1815 had re-established most of the kingdoms and principalities which divided Italy before the French Revolution. Everywhere the sovereigns had been restored to their ancient prerogatives, and Italy again knew only one form of political organization, an absolute government. And all these princes were dependent upon Austria, which repressed with the severest rigor every liberal tendency and obstinately resisted every step towards constitutional government in the peninsula.

The Austrian policy operated to develop two tendencies, which little by little absorbed both the middle classes and the people: first, towards the establishment of representative institutions, and second, the independence of Italy and the expulsion of the foreigner. The violent repression of these only led to insurrections and the development of secret societies. The hopes of all patriots were turned towards Piedmont, the least feeble and best organized of all the Italian States, and having a king who shared the liberal ideas. But Charles Albert did not feel himself strong enough to resist the Austrian army, and it was from the Rome of Pius IX. in 1846 that the first movement came towards constitutional and representative

government, which spread rapidly over all Italy. A commission appointed by Charles Albert hastily prepared the articles of the "Fundamental Statute," which was promulgated on March 4, 1848, and was later extended to all Italy.

The framers of this charter took as a model the French constitution of 1830. The king shares in the legislative power by the initiative — which, however, is equally open to members of the legislature — and by the veto. He has the executive power, but all his acts to be valid must be countersigned by ministers who assume the responsibility for them. There are two chambers, one elective and one composed of members nominated for life by the king. It is to these that our attention must first be given. The Chamber of Deputies consists of 508 members, elected on a general ticket by 135 districts, that is, an average of somewhat under four each. The voters include every Italian twenty-one years of age, in the enjoyment of civil and political rights, knowing how to read and write, and fulfilling one or the other of the following conditions: 1, capacity, proved by an examination covering the requirements of primary education, or by the fact of holding or having held certain functions prescribed by law; 2, payment of direct taxes to the State amounting to four dollars; or 3, the occupation of real estate of a value fixed by law. The real test, of course, is education.

Senators are appointed for life by the king, without limit as to the number, but restricted to certain categories enumerated in the constitution, as the higher clergy, the scientific bodies, the elective assemblies, high functionaries, the magistracy, the army, the great proprietors and men who "by eminent merit or services have honored the country." The senators number slightly more than three hundred. The king has the right of dissolving the Chamber of Deputies, but in that case he must summon a

new one within four months. This right has been frequently used in Italy, the duration of Parliament, which is fixed by law at five years, having been reduced to an average of three. There are, however, sufficient reasons why this power has failed to achieve what it has done in Great Britain, and what might reasonably be expected from it.

The chambers are divided by lot into bureaux renewed every two months. These bureaux examine every project of law which is referred to them and choose the members of a committee or central bureau to make a thorough study of it. At the commencement of each session, the two assemblies elect various permanent commissions, of which the most important is charged with the examination of the budget.

The right of initiation is equally open to ministers and to the members of either house, whether in the proposal, amendment, or adoption of laws, or in the voting of taxes, budgets, loans, and in the approval of accounts. But whereas no limit is fixed to the initiative of ministers, the propositions of deputies and senators must on the contrary receive permission to be read in public session, which is obtained in the Chamber by the concurrence of three bureaux, or in the Senate by two-fifths of the members voting. The principal obstacle in the way of parliamentary government in Italy consists in the situation of political parties: first, the existence of an anti-constitutional party, the Catholics, whose complete abstention from political life falsifies the national representation; and second, the disorganization of parliamentary groups, which prevents the formation of stable majorities.

Various groups of the Italian chambers have taken the names of Right, Centre, and Left, but these are merely arbitrary divisions. Neither the one nor the other of these fractions forms a really organized party, having a defined programme or obeying recognized chiefs.

It would be a grave error to see in the Right a Conservative, and in the Left the whole Liberal party. There is no such thing as a conservative group in the Italian Parliament. In reality, if we except perhaps some isolated deputies of the extreme Right and the republican Socialists of the extreme Left, all the deputies belong to the various shades of the Liberal party. Those who sit at the right bring to government more moderate ideas, a more conciliatory spirit, but do not themselves form a compact party, and are divided into groups more or less marked. It would be vain to seek a precise line of demarcation between the Right and the Left. Instead of two clearly divided parties, we see a whole series of groups, of which each is hardly distinguished by imperceptible shades from the next group, and yet finds itself in marked opposition to the more distant groups. All these coteries have besides no organization and no stability. In truth, they are less separated by principles or by purely political views, than by questions of persons and private interests. The deputies are less devoted to a programme than to a man, less to an idea than to the pursuit of personal advantage. This situation is further complicated by certain sectional divisions, which the recent unity of the kingdom has not been able to overcome.

This parliamentary anarchy cannot fail to falsify the whole organization of the Cabinet. For a ministry, homogeneous and compactly united, stable and strong, it substitutes that which is only a counterfeit, — a cabinet of coalition, of which the existence is as precarious as its authority. Never can the government call itself sure of tomorrow; formed by a union of discordant elements, it may be overturned by the withdrawal of one of its members; resting upon groups, rival if not hostile, it is at the mercy of all ambitions and all unreflecting discontents. Since the introduction of the constitutional *régime* a single minister, Cavour, has known how to impose his strong authority upon his colleagues and upon Parliament.¹ Others, without doubt, have appeared indissolubly bound up with the government, but it was at the price of the surrender of all principle. Witness, for example, Depretis, who invented the policy of "transformism," and maintained himself in power by prodigies of balancing, calling successively to his aid, with astonishing skill, all the parliamentary groups from the Right to the extreme Left. Others have also been led to think that their authority was established, and that they could enforce it for a moment by the formidable majorities which gave them votes of confidence; but a sudden and heavy fall soon served to show them the fragility of their power.

Everything becomes deceptive in a parliamentary system so applied. Unreliable the votes of blame or want of confidence; the majority,

¹ Cf. what has been said of Thiers in Chaps. XIV. and XV.

formed often of the most opposite elements, without other bonds than their common opposition to the ministry, offers no consistency and cannot serve as a basis for a government of any kind. Just as unreliable are the votes of confidence, which are less based upon approval of the policy of the ministry than upon a fear of its possible successor, so that more than once a Cabinet has resigned after such a vote. Unreliable, finally, the changes and reconstitutions of cabinets resulting from votes of the Chamber, sometimes even in consequence of simple intrigues of the lobby. Sometimes, for example, those who the day before directed the attacks of the opposition enter into the ministry which they have so far vigorously combated. Sometimes the chief of the government, upset by an adverse vote, still presides over the new Cabinet, in which, for that matter, reappears a good part of his old colleagues. And thus this parliamentary anarchy, which exaggerates the right of control by the chambers, ends by weakening it. Through abusing on every pretext the right of overthrowing ministries, the Parliament succeeds only in opening a series of crises without appreciable results, which achieves for the most part no modification of policy nor even any serious change in the personal composition of government.

We will not dwell here upon the delays and fetters which the disorganization of parties inflicts upon parliamentary labors. We point out the fatal action which it exercises indirectly upon all branches of the administration of the State. The ministry has no power of resistance to the encroachments of the chambers upon the domain of the executive; it is reduced to beggary, as it were, of the support of deputies by distributing to their followers government places and favors. The deputy, often elected by trickery, by a coalition of discordant if not hostile elements, is no longer the representative of ideas and principles. "He is only the organ of local interests, the patron, the solicitor, the agent of those who have given him his seat." (Minghetti, *I Partiti politici*, quoted by Dupriez.)

But, badly as the chambers get on with the ministers, they cannot do without them.

The constitution gives to the ministers the right of entry into each chamber, and of being heard there whenever they demand it. No provision authorizes the chambers to require the presence of the ministers. The Cabinet, however, takes care to be always represented before them. When sometimes it has forgotten to respect this custom, the Senate and the Chamber have not failed to recall attention to it by suspending debate and inviting the minister particularly concerned to attend the session. The latter, although observations far from

polite have sometimes been addressed to him, has always responded to these invitations without contesting the right of the Parliament.

The parliamentary committees have assumed in Italy an exaggerated importance to the detriment of ministerial influence. The Cabinet, far from finding in their members and their reporters devoted partisans, meets too often among them uncertain friends whose ambition and personal interests are not controlled by party discipline, or concealed adversaries always ready to inflict a check upon it. Sometimes the plans of the government come from their hands wholly transformed. Sometimes its plans find themselves in collision with counter projects, starting from entirely opposite principles. Sometimes the business of the committees is conducted with intentional delays, while the government and the chambers are powerless against this obstruction.¹

The Italian ministries do not enjoy an authority either stable or strong enough to remain the sole directors of financial policy. It is especially in the discussion of the budget that their influence finds itself counterbalanced and compromised by the existence of the permanent committee which absorbs the consideration of all propositions. Powerful by the importance of its mission, as well as by the number and authority of its members, it uses its power not merely for closely checking and revising the plans which are submitted to it, but also for influencing the policy of the government and thrusting itself into the administration. It is seldom that the ministry can openly combat the conclusions of the budget committee and its reporter. Often it sees itself forced to accept compromises, of which the treasury almost always pays the expense. The ministry may have proposed, for example, an increase of some credit which they have thought necessary for the public service. The reporter, or, as we should say, the chairman, refuses it to them on the ground of strict economy, but yields at length, provided there is a corresponding increase in the credit destined to some establishment of interest to his province.²

The Italian chambers have used and abused the rights given them by the constitution, the laws, and the rules, to subject the Cabinet to a rigid and incessant control. Overwhelming the ministers with questions and interpellations, demanding from them extended reports of their action and numerous justifying documents, having recourse even to minute investigations, they do not cease from exercising over the affairs of the government a jealous and restless watchfulness. The ministry, deprived of the support of a stable majority, is continually exposed to receive a vote of want of confidence, and, conscious of its precarious situation, dares not oppose a serious and decided resistance.³

¹ Dupriez, Chap. III., Vol. I., pp. 298-310.

² *Ibid.*, p. 318.

³ *Ibid.*, p. 319.

All these elements of control have not appeared sufficient in connection with certain financial services, and the chambers have established several vigilance committees to keep an eye, for example, upon the administration of the public debt, the funds appropriated to public worship, the military chest. These committees assume, in the name of the Parliament, a lofty tone of control. On this ground they can make all the investigations and demand all communications which they think useful. Every year they make a report to the chambers.¹

In brief, while the condition of the country and the people calls for exceptionally strong executive power, with the sole initiative in legislation and full control of finance and administration, subject only to criticism and veto by the legislature, these elements are conspicuously wanting.

The effect of this complete dislocation of government is visible in almost every step of Italian history in the last thirty years. The submission to the Triple Alliance, with the consequent crushing burden of naval and military expenditures; the war with Abyssinia; the immense exodus of population to the United States and South America; the distress and suffering of those who remain; not merely the increase of taxation, but its fearful inequality and injustice; the anarchy, disorder, and misery of the provinces; the scandal and collapse of financial institutions, — all may be summed up in three words, failure of government. It seems evident that no improvement can be effected by a change in the composition of the legislative bodies, or the methods of voting, or any practicable restriction of the suffrage. The situation turns, precisely as in France and the United States, upon the relation of executive and legislative power. In the future, more or less remote, there are but two alternatives possible: the establishment of executive power, strong enough to govern, but held in strict responsibility to and control by public opinion; or else the seizure of power by an executive, also strong enough to govern, but only

¹ *Ibid.*, p. 324.

responsible to itself or to the private and class interests surrounding it, and with entire disregard and contempt for the popular will.

Nor does it affect the principle that the electorate in Italy, even with a common school education, has very little comprehension of or interest in public affairs, while in the United States the voters are much better informed and take a keener interest in the working of government. No doubt the chance seems small that the Italian king will make a direct appeal to the people, and nurse and educate public opinion into supporting him in a resolute though constitutional stand against the chambers. It is much more likely that the confusion and anarchy will increase till some military despot is imposed upon the country from within or outside, and be welcomed by the people as the least of two evils. In the United States, on the other hand, we may hope that a periodically elected executive may find in the direct support of his constituency a peaceful and constitutional, and yet adequate, means of restoring the balance of power.

We turn next to a very different scene, where in Prussia and the German Empire the conflict of powers in nominally representative governments has resulted almost wholly to the advantage of the executive. Before the French Revolution the struggle for existence in Germany left little room for anything but military despotism. The kingdom of Frederick the Great was not a good nursery of popular self-government. Although in the war against Napoleon the sovereigns were obliged to make an appeal to their peoples, the Confederation established in 1815 was nothing more than an alliance of princes for protection against foreign conquerors, against each other, and against their peoples. Their internal policy consisted in combined repression of liberal, or, as they called it, "demagogic," tendencies.

In the next thirty years Prussia, with a view of taking the lead in Germany, coquetted with representative government; but it was not till the French Revolution of 1848 started the movement which swept over Europe that the king granted a constitution on the 5th of December. It was to be accepted by two chambers, created and organized by an electoral law also granted by the king, and having been accepted by them after some difficulty, was published on the 31st of January, 1850, and is that of the kingdom of Prussia to-day.

The Prussian constitution took that of Belgium as its model. The articles describing the powers of the king, the competence of the chambers, and the functions of the ministers are almost exactly copied from the latter. But the basis upon which the two proceed is wholly different. The Belgian Congress had written at the head of its work, "All powers come from the nation." The king of Prussia in his constitution was far from recognizing the sovereignty of the people. The king preserves all the powers which are not expressly taken from him by the constitution, and his authority is unlimited in principle. On the other hand, the legislative chambers have no other rights than those expressly given them by the constitution.

As to the functions of ministers, we have had to keep in view throughout the relation of legal theory to actual facts. If constitutional texts can easily enough regulate the organization and functions of the grand political powers, they cannot succeed in determining the real strength of each and establishing between them an impossible balance. In some constitutional monarchies the Parliament, or rather the popular chamber, has asserted an overwhelming strength and in different degrees invaded every department to make its irresistible influence felt. In Prussia the result of the struggle has been wholly different. Royalty, forced to abandon a part of its powers to the national representation, has known how to defend successfully all the rights which it has reserved; it has even had strength enough to cancel more than one restriction on its liberty of action. If the king

is no longer absolute, he has maintained the first place in the state. Thus the centre of gravity of the political organization is found always in the Crown and not in the elective chamber. And from this principle flow out all the differences which profoundly separate the Prussian ministry from parliamentary cabinets.¹

From the times when the rulers of Prussia were known as electors they had a privy council of notables called to their aid like that of the king of Great Britain. From that again was developed a cabinet, but instead of a body unknown to the constitution and developed from the Parliament, it was a body established by the sovereign and under his order, the head being a chancellor who was the medium between the king and the other ministers. After being several times in abeyance, this office was revived in its well-known form under Count Bismarck.

By the constitution the "king appoints and dismisses his ministers," and in fact he exercises this right with entire freedom. He need not and does not trouble himself about the desires or the aspirations of either the upper or lower House. The parliamentary majority does not dictate his choice nor exercise any appreciable influence upon it.²

The ministers are entirely responsible to him. They have not been called to power by the *Landtag*, and whatever may be the distrust of that body towards them they all remain at their post as long as the royal power shall keep them there. It is true that the constitution expressly recognizes ministerial responsibility. "The ministers of the king are responsible," it says. "All the acts of the king, to be valid, must be countersigned by a minister, who by that fact becomes responsible for them" (p. 361).

Unfortunately, the constitution omits to say to whom the ministers are responsible. No legal disposition requires the king to take them from the chambers. Nor is he limited in his choice by any practical necessity. It is not surprising, therefore, that the ministers are mostly technical men, trained in the ranks of administration and well fitted for that purpose, but much less available as defenders of popular liberty.

¹ Dupriez, Chap. III., Vol. I., p. 350.

² p. 359.

The Prussian *Landtag* consists of two houses, one of nobles by descent or appointed by the king, the other of 433 members, chosen by universal suffrage in the second degree and by a peculiar system. Every Prussian twenty-five years of age, and in the enjoyment of civil and political rights, is inscribed upon the list of electors of the first degree. These electors are divided into three classes, in such a way that each class pays one-third of the taxes assessed upon the commune or voting district. But to make the distribution into three classes the electors have been divided according to the amount of their taxes. Thus the first class consists of those who are most highly taxed and therefore very limited in number, while the crowd of workmen, who only pay a very small contribution or are exempted from all taxes, are placed in the third class; and as each class is entitled to name an equal number of electors of the second degree, the grand proprietors and employers of industry of the first class, united with the middle class of the second, inevitably assert their superiority over the popular masses.¹

The constitution imposes upon the government the duty of calling the chambers together at least once a year, during two months and a half from the beginning of November to the middle of January. The king can dissolve the chambers or adjourn them, but not for more than thirty days without their consent. In case of dissolution, the electors must be assembled within two months and the deputies within three months.

For conducting business and working out laws the Prussian chambers are divided into sections. In the House of Lords the President appoints five sections for the whole session. In the second Chamber the deputies are divided by lot into seven sections, which are not renewed in the same session unless by formal vote of the assembly upon the demand of fifty members. The sections do not study or discuss the propositions submitted to the Chamber; their duty consists simply in electing the members of the committees. It is upon these that devolves the preparation of legislative work. Composed ordinarily of eighteen members in the upper Chamber and fourteen members in the lower, they are some of them special, charged with studying a particular project, the others permanent, having the mission of considering all affairs, financial and other, which may present themselves in the course of a session.²

¹ *Ibid.*, p. 387.

² p. 389.

The chambers of the *Landtag*, like the Prussian people whom they represent, are not divided into two great political parties united and disciplined, disputing and conquering the majority in turn. Without doubt, in Prussia, as elsewhere, we find two opposite tendencies, one conservative and the other progressive, but the political parties are not formed on this single basis. Special considerations, as those of religion and race, have given birth to various groups. And even the parties which have sprung from opposition between conservative and liberal ideas have been immediately subdivided into mutually hostile groups, with no other common bond than some vague principles, and too separate to be able to come to an understanding upon any contingent question.¹

The initiative of legislation belongs, according to the constitution, equally to the king and the chambers, and in matters of finance as in all else; and it seems as if all the elements were present for an assumption of all government by the chambers, instability of ministries, and the practical anarchy which we have seen in France and Italy. But the resisting power was different.

During twelve years from 1848 the struggle continued undecided. The king in reality yielded no particle of his power, but the Liberals in the lower Chamber persisted, now in the minority and now in the majority, in fighting for the establishment of parliamentary government. In 1862 the ministry of which Count Bismarck had just been called to the head took the offensive in its turn. The Chamber of Deputies refused to consent to the reorganization of the army and the increase of its numbers; the ministry proceeded of itself to this reorganization, thinking that the *Landtag* would yield before accomplished facts. But in its turn the Chamber rejected the credits necessary for these changes. The government did not accept the defeat, but caused to be voted by the upper Chamber a budget such as it had presented, without troubling itself further about the modifications introduced by the deputies. During four years it governed thus in open conflict with the popular assembly, without a budget regularly voted. Meanwhile the country remained calm; the king was not exposed to the fear of serious uprising, and even dared to engage in two great wars. At length the victories of Prussia in 1866 put an end to the crisis; the Chamber was obliged to recognize the accomplished fact and to accord to the ministers a bill of indemnity.

¹ Dupriez, *op. cit.*, p. 396.

Parliamentary government had been definitely conquered by the success of the Prussian arms against Austria.¹

The struggle had not remained confined to this special question of the reorganization of the army, or to that of the financial prerogatives of the lower Chamber. In the first period of the crisis the Chamber had expressly taken a stand between the two systems. In January, 1863, a motion of address brought before the Chamber of Deputies demanded of the king the dismissal of his ministers. Count Bismarck seized the opportunity to point out the irreconcilable opposition between the two systems brought face to face.

"The plan of address," he said, "has one incontestable merit, that of rejecting all uncertainty. If it is adopted, if the Chamber claims the exclusive right of definitely establishing the budget, of requiring the king to dismiss ministers who have not its confidence, of fixing, by its resolutions with regard to the budget, the numbers and the organization of the army, of controlling the relations of the executive power to its organs, then it cannot be denied that Parliament disputes supremacy with the Crown."

In reality the plan of address may be summed up thus, "By this address the House of Hohenzollern is required to transfer its constitutional rights to the majority of this Chamber."

And opposing to parliamentary government the system in force in Prussia, he added,

"The ministers in Prussia act only in the name and upon the order of the king; they are the ministers of the king, and not at all, as in England, the ministers of the parliamentary majority."²

Supported by the royal power, the ministers have caused to be respected, and have even extended, their constitutional rights; they have profited by their strength to restrict as much as possible the rights of the chambers, or at least to correct their effects. Their right of being heard at all times on the subjects under discussion extends, under the rules of the chambers, to the sessions of the committees as well as of the whole. The "floor" can never be refused to them. They can speak even after the closure of discussion has been pronounced, and thus reopen debate. While a simple member of the *Landtag* can only speak once on the same subject, every minister can demand the floor as often as he likes, and the president must yield it as soon as the member then speaking has finished, and that in preference to all members who have put down their names before him. On one occasion the ministry insisted that the president had no right to interrupt a minister, and if they were compelled to give up this exorbitant pretension, the Chamber, on its side, has not been able to claim for its president the right, in virtue of his disciplinary power,

¹ *Ibid.*, p. 378.

² p. 379.

to deny the floor to a member of the government who disturbs order by his discourse, nor even the right to recall him to order or to the question. If an "interpellation" is put forward, the ministers will reply only what they please, or will refuse all explanation. If the Chamber decides to discuss the interpellation, the ministry will show how much importance they attach to its wishes by quitting the hall of session abruptly and not returning before the end of the debate. If the chambers appoint a committee of investigation of their acts, the ministers will forbid subordinate agents to answer the requisitions of this committee, and will declare openly to the *Landtag* "that a committee appointed contrary to the wish of the government cannot avail itself of the assistance of the government." In a word, the responsibility of the ministers towards the chambers remains always in the condition of a constitutional principle without any possible effect.¹

The constitution says, "The right of submitting plans of law belongs equally to the king and to the chambers." Every plan submitted by the government, however, must be taken up, debated, and made the object of a direct vote. The chamber to which it is presented cannot refuse to consider it. It must take it up and vote for its acceptance or rejection. It cannot get rid of the obligation by passing to the order of the day.²

In sum, the parliamentary initiative is as restricted in Prussia as in England. In the one as in the other country the ministry possesses the same practical monopoly in submitting laws, and exercises a preponderant influence upon the fate of measures proposed by members of the legislature. It is the source of this influence which is different. In Great Britain it is the opposition of two great parties, united and disciplined, and the power of the House of Commons; in Prussia the preponderant authority of royalty and the splitting up of political groups have made ministers the movers and directors of legislative work.³

The elaboration of budgets is directed by the minister of finance. He puts himself in relations with the heads of the other departments, receives from them the figures of the probable receipts and necessary expenditures of their respective administrations, criticises or accepts

¹ Dupriez, *op. cit.*, p. 401.

² p. 403.

³ p. 406.

them. His report is next presented to the king, who approves it and orders it to be placed before the Chamber of Deputies.¹

The constitution recognized the right of the *Landtag* to vote annually the budget of receipts and expenses; it took particular care to proclaim as unlawful the imposition of taxes not established by law,

and gave the initiative to the Chamber of Deputies, that of the Lords having only a veto upon the measure as a whole.

The crisis of 1862-66 gave a terrible blow to the financial power of the *Landtag*. We have seen how the conflict relating to the reorganization of the army did not fail to extend itself to the region of finance. It was inevitable: the financial rights of the chambers are the source and the guarantee of all their other powers. We have seen also how the conflict of powers ended in a victory of the government, which, after having directed affairs for four years without a regular budget, obtained a bill of indemnity after the success of the Austrian campaign. "The conflicts of powers," said Prince Bismarck one day, "always degenerate into questions of strength," and sure of his strength, he did not seek to cover his conduct with an appearance of legality.²

The Prussian *Landtag* never offers the spectacle so frequent in certain other countries, — a committee of the popular chamber receiving with marked distrust the budget brought forward by a minister, taking upon itself to make it all over anew, increasing expenses in one place for some private interest or political purpose, reducing them in another without taking account of governmental necessities, seizing this opportunity for upsetting the system of taxation, attacking and abasing the ministry, and, finally, opposing to the proposal of government a separate proposal, which almost always involves an increase of expense. The Chamber of Deputies in Prussia has never had power enough to encroach to this extent upon the work of executive power.³

It is not necessary to dwell at length on the constitution of the German Empire. As the constitution of Prussia was extended in 1866 to the North German Confederation, so in 1871 it furnished that of the empire. A few extracts from M. Dupriez will explain the situation.

¹ *Ibid.*, p. 413.

² p. 410.

³ p. 415.

The empire has, in principle, no powers but what have been intrusted to it by the states. In fact, there is hardly any domain which wholly escapes its grasp, and the wide and ambiguous texts of the constitution allow it to extend its action every day at the expense of the autonomy of the states. In no federal empire have the attributions of the central authority been so liberally handed over. Moreover, no federal power has ever rested upon a force so irresistible as the present power of Prussia in the hands of the emperor.¹

The German Empire is, then, not a confederation of equal states, in which each one has the same rights, the same influence, and the same interest. The union has been realized by Prussia and for Prussia. The foundation of the empire has placed under her direction and control all the lesser German states, which to-day cannot move outside of the circle of Prussian policy. . . . It was necessary, however, to conciliate as much as possible the susceptibilities of the confederated states, to leave to them in appearance a share in the government of the empire, and, through the formal rights and powers attributed to them, to mask under constitutional texts the omnipotence of Prussia.²

To serve this purpose was set up the *Bundesrath* or Federal Council, consisting of delegates from the several States, with numerous constitutional provisions which resolve themselves into the rule of one man, the chancellor of the empire.

This chancellor is clothed with a double character: on the one hand, he is the representative of Prussia in the Federal Council, the organ by which the king of Prussia exercises his rights as a member of the empire; on the other, he is the first imperial functionary, the sole minister of the empire.³

The first Prussian minister must be the minister of the empire, because the imperial policy is only the Prussian policy applied and carried out upon a wider scale. The minister of the empire must be the first Prussian minister, because the imperial administration derives all its force from Prussian institutions.⁴

The chancellor is named by the emperor-king alone; no other authority, either Prussian or imperial, can exercise any influence whatever over this nomination.⁵

This institution of a single minister, president of the Federal Council, is wholly original and is found in no other government. It may excite surprise that the imperial constitution, imitating so largely the Prussian, did not establish by the side of the emperor a council of

¹ Dupriez, *op. cit.*, p. 471.

² p. 477.

³ p. 483.

⁴ p. 485.

⁵ p. 484.

ministers like the Prussian ministry of state. The proposal was made under various forms in the *Reichstag*, but Prince Bismarck opposed it with all his might.¹

His arguments are rather transparent, serving hardly to conceal his real object—the defence of his master's authority against the liberal attempts of the *Reichstag*.

The Prussian government wanted, above all, to prevent the parliamentary system from taking root in the empire. It rejected the institution of a council of ministers, borrowed expressly from that system, and, moreover, demanded for the purpose of establishing such a government. The conflict between the king and the Prussian Chamber of Deputies had just ended in the victory of the former; but this victory, which might be attributed to special causes, did not then appear to be final. New struggles might arise after the enthusiasm excited by the recent triumph had grown cold. If personal government was to be established in the empire, it would not do to accept an institution like a council of ministers, which would have recalled parliamentary government to the *Reichstag* and suggested a struggle against the empire like that in which the *Landtag* had just succumbed.²

So much having been said of the government which has been imposed upon Germany, it is natural to ask what are its results. It must be admitted that Prussian administration stands among the first in the world. All that civil service reform has been trying to accomplish in this country for thirty years, purity, economy, and efficiency, are reported in full measure. The government of cities excites the enthusiasm of observers like Mr. Albert Shaw. The commercial development since the establishment of the empire has been such as to threaten the supremacy of Great Britain. The public finances, at least as far as arithmetic goes—for the blood tax does not appear in the budget—are probably second only to the British. Military and diplomatic efficiency, the special achievements of despotism, have not been equalled since the first Napoleon.

¹ *Ibid.*, p. 488.

² p. 489.

But the *per contra* heavily weighs down the scale. Leaving out of sight the effect upon individual character and enterprise in the nation, the external manifestations are sufficient. Prussia has overthrown the whole peace of Europe which had endured for half a century. Beginning with an attack on Denmark, she tested the power of Austria and tried her hand next upon that empire. An interval of only four years enlarged her views to France. In consideration of the union of Germany, Europe tried to overlook the sacrifices which Prussia had imposed upon others as well as herself. But the cost was by no means paid. Twenty-five years of crushing militarism have not visited its weight upon Germany alone. It has kept all Europe straining its resources and cowering in fear of the impending struggle, well knowing that an empire raised by the sword must live by the sword.

The internal condition of the empire is in perfect correspondence. A stern repression of free thought and criticism, a system of police espial, and an insolent domineering of the military caste over civilians, almost in exact parallel with the condition of France under the first Napoleon; and the whole hanging upon the arbitrary will of a young emperor, whose mental soundness is not beyond suspicion. An impartial observer can hardly help asking whether the next development will be of foreign war or internal revolution.¹

What is the prospect of the latter? According to the view of this work, whenever a legislature has a foothold at all it is sure to grasp at power, and as against anything but military force has a superiority in the means of gaining it. Even the Prussian *Landtag*, as M. Dupriez points out, by bargaining in the approval of laws, by

¹ Whoever believes that militarism, protectionism, despotism, bureaucracy are good and inevitable things will believe in the permanence of Prince Bismarck's work. — *London Economist*, August 6, 1898.

financial criticism, by interpellations, even if ministers do not choose to answer, and by resolutions, exercises a certain control over the government which it is constantly seeking to extend. And the *Reichstag* is a far more powerful body. The members of that body are elected for five years by direct universal suffrage on a single-member ticket. Every German citizen can be either elector or elected who is domiciled in the empire even outside of his own state. Thus a Prussian may be a voter in Bavaria, and elected for any part of the empire. The deputies are elected, to the number of about four hundred, by districts, in the proportion of one to one hundred thousand inhabitants, though as this division is based upon a law of 1869, the unit of representation is much larger. M. Dupriez observes :—

The government is not at all inclined towards a new assignment of members, which, increasing by a considerable proportion the deputies from the large cities and the industrial centres, would inure to the exclusive advantage of the radical parties. The city of Berlin, which has more than 1,500,000 inhabitants, still elects only six deputies.¹

It is evident that a body like this, if allowed to exist at all, will not remain a cipher in the government. In the famous *Kulturkampf*, or enforcement of religious tests, even the Iron Chancellor was fairly beaten and forced to abandon his measures by a combination of the Catholic members, and in other instances the *Reichstag* has held its own. With the retirement of Prince Bismarck and the advent of weaker men the conflict is still more open. The weak point of despotism is its inability to procure a succession of men. Within twenty-five years from the death of Frederick the Great, Prussia had sunk to a point where Napoleon crushed her at a blow. Sixty years later Prussia took an ample revenge upon France. The turn of fortune may again find the

¹ *Ibid.*, note to p. 525.

German Empire prostrated either from the outside or the inside.

It should be remembered that both England and France made their first step towards modern government and the abolition of divine right by beheading a king. Later manners may deprecate such extreme methods, but the first advance towards political progress in Germany will consist in opening a door and peremptorily inviting the monarch to place himself outside of it. Inasmuch, however, as it is only late in the nineteenth century that has occurred in Germany that consolidation of feudalism into monarchy which took place over the rest of Europe in the sixteenth and seventeenth, we may perhaps expect another century or two to elapse before that country arrives at the next stage of modern progress in government.

The vital point of interest for the United States is, whether some mean term may not be found between despotism of the executive and despotism of the legislature. Suppose that for chancellor of the empire we read a President of the United States or governor of a State; that, instead of deriving his authority from an emperor-king ruling by divine right, it comes to him from election by the whole people, either of the country or of the State; that he is clothed with power enough to hold his own against the legislature; and that the two are left to fight their inevitable battle in full view of public opinion, the supreme arbiter and controller over both. That is the problem which we shall have to consider presently.

The example of Switzerland has of late been much held up for instruction and reproof to the United States. As that example may through difference of circumstances be not only inapplicable, as we have seen in the case of European cities, but also fallacious and dangerous, it will be worth while to consider it rather carefully.

There is a country rather less in size and rather larger in population than Vermont and Massachusetts taken together, a large part of the surface consisting of barren mountains. It contains little or no coal, no canals or navigable rivers, and no sea-front. It has no very large manufactures or large cities, and no great extremes of wealth and poverty. It is an emigrating and not an immigrating country, with a population perhaps as little changing as any in Europe. Its institutions have come down for several hundred years with little modification, even in external form, till little more than half a century ago, and in internal spirit even now. Evidently we must beware of analogies transferred to the United States.

The ancient Swiss confederation was nothing more than a league, offensive and defensive, of sovereign states, with a Diet which was merely a diplomatic conference. The French Revolution and Napoleon attempted some changes, but the Congress of Vienna in 1815 substantially restored the old state of things. It was not till 1830 that the movement for a closer union between the cantons began, which found expression in the constitution of 1848. A complete revision took place in 1874, based chiefly on three points: first, the extension of the federal power, especially in relation to the army and private law; second, the introduction of the referendum; and third, the establishment of a federal tribunal as a permanent institution, and with largely increased jurisdiction, but without serious modification of the internal relation of executive and legislative power.¹

The Americans, even while putting at the base of their constitutions the principle of popular sovereignty, found themselves strongly influenced by the monarchical traditions and individualistic tendencies of the Anglo-Saxon race. In founding their new republican system they took as a model a monarchical constitution, that of

¹ Dupriez, Vol. II., pp. 167-169.

England; merely introducing the modifications made necessary by the nature of the government they wished to establish. Thus while suppressing heredity they preserved the unity of executive power. On the other hand, they maintained, strengthened, and developed the guarantees which the monarchical constitution provided against the arbitrary and abusive development of power. But they did all that by employing the same methods which their fathers had used and following the road which had been opened and more than half laid out in the political organization of England. It was thus that they enforced, perhaps excessively, the separation of powers, which they regarded as the best and final safeguard of individual liberty and rights.

In Switzerland the principle of popular sovereignty did not find itself embarrassed by traditions of personal power. Everywhere it had as the sole basis the cantonal constitutions, of which several had even preserved direct government by the general assembly of citizens. It was, therefore, directly and solely upon the sovereignty of the people that the new political organism must inevitably repose.¹

Accordingly the principle of the separation and reciprocal independence of powers was almost wholly neglected by the Swiss constitution. No doubt it created various organs and attributed to each of them a special domain. But it did not closely and systematically mark off their respective jurisdictions, and instead of placing them on a footing of mutual equality and autonomy it established between them perfectly defined relations of subordination. A writer has been able to say, not without reason, that the political constitution of Switzerland is distinguished by an organic confusion of powers.²

In other words, while in England and the United States the supremacy of the legislative power has been obtained by a long and sustained conflict with the executive, in Switzerland that supremacy was frankly and fully established from the start. As the legislature was the only organ emanating directly from the people—the executive and judiciary deriving from it—all real power was vested in the legislature. But as it soon became apparent that even the legislature must be held in check by some power, the popular referendum and initiative were resorted to. How far they have served as a substitute for executive control is a question of deep interest.

¹ Dupriez, *op. cit.*, pp. 177, 178.

² pp. 178, 179.

Three distinct authorities take part in the government of Switzerland: the Federal Assembly, to which is especially confided the legislative power, and which is divided into two elective chambers, one representing the Swiss nation and the other the cantons; the Federal Council, elected by the Assembly to watch over the execution of its laws and decrees, and to direct the administration of the country; the Federal Tribunal, also elected by the assembly to form the supreme court of justice of the Confederation.

But this arrangement must be regarded as a simple assignment of functions to duly subordinated organs. There can be no question of finding separation and independence of powers. The principle of popular sovereignty — which in some points is divided between the Swiss nation and the cantons — governs all the federal institutions. The people, unable to govern themselves, have delegated to the Assembly all the powers which they cannot exercise themselves, but have reserved with supreme authority very thorough rights of control over their agent. Thus the constitution of 1874, which cannot be revised without the consent of the people, guarantees to them through the institution of the referendum the power of annulling the deliberations of the Assembly, upon which the executive has no veto. On its part, as the Assembly is incapable from its very organization of providing for all the necessities of government, it must assign to the other political organs, under its authority and surveillance, the exercise of certain powers.¹

Of these the Federal Tribunal enjoys a certain independence, inasmuch as its decisions cannot be reconsidered by the Assembly or influenced by its will, unless that will takes the form of a bill or resolution. But its subordination appears in its origin and composition, since its members are elected by the Assembly for six years, and are reëligible.

But it is especially in the relation between the legislative and executive organs that the constitution has established a complete confusion of powers. It has placed the Federal Council under absolute dependence upon the Assembly. The latter elects the members of the Council for a term of three years and can reëlect them indefinitely. Having once conferred the office the Assembly cannot legally withdraw it or shorten the term. Nevertheless it possesses an indirect means of arriving at the same result, and it could with as much facility as the English Parliament or the French Chamber

¹ *Ibid.*, p. 179.

render government impossible to the federal councillors, and give itself up to the game of upsetting ministries. It is true that it does not use and never has used this power; but this is a result mainly of the political traditions, of the temper and moderation of the Swiss people, and perhaps also of the subordination legally established, and in fact respected, of the ministers towards the assembly. Never can the will of the first prevail against the authority of the other. The ministers have not even the choice between submission and resignation; they submit and obey with a good grace.¹

The Federal Council consists of seven members, who, though chosen for three years, divide the different departments among themselves at the beginning of each year. No more than one member can come from one canton, nor can there be relatives in direct line or as near as first cousins. The ministers are forbidden to hold any other office, federal or cantonal, or even to pursue any private profession. They cannot be members of either assembly, though almost always chosen from one or the other. But though they have no official seats or votes they are in no wise excluded from either chamber. According to the Constitution, "The members of the Federal Council have a consulting voice in the two branches of the Federal Assembly as well as the right of submitting proposals." Sometimes they assist the chambers in the execution of their mission, by presenting plans of laws, of decrees, and of budgets, or give their opinions upon all subjects under discussion. Sometimes, on the other hand, they submit to control by the Assembly through reports, questions, and interpellations.

Although the election of the Federal Council is intrusted to a political assembly, the choice is not always dictated by considerations of party, and the majority does not pretend to reserve all the seats for its adherents. In fact, the general feeling is, that this council ought to represent all the large fractions of the Assembly. Ac-

¹ Dupriez, *op. cit.*, p. 181.

cordingly, notwithstanding any changes of parties, the terms of ministers are generally renewed. Of the seven members who formed the first Federal Council in 1848, two still remained twenty years afterwards, four died in office, the seventh had been displaced at a time of renewal by a younger rival, supported by the radicals. During more than forty years it has happened only twice that a member of a preceding administration has been rejected. The most hostile political groups await the voluntary retirement or the death of a member before seeking a change.¹

How does it happen that certain ministers consent to remain in an administration of which the majority is hostile to their ideas, to promote the execution of a policy which they disapprove? That pertains to a certain spirit of patience, of submission to law and to the principle of the preponderance of majorities, quite peculiar to the Swiss people, with complete forgetfulness of all feeling of egotism and personal vanity. Each one yields with good grace before the will of his colleagues, and does not think his dignity suffers because he gives way to the decisions of the majority. The most grave differences of opinion may be publicly manifested between the members of the Council. Sometimes they are seen divided even in the sessions of the Assembly, and sustaining with the utmost vigor against each other completely opposite ideas. The struggle ended, whatever the result may be, conquerors and conquered resume their occupations and continue to join in a friendly way in conducting the affairs of the State. It is rare, moreover, that the majority abuses its strength by imposing its will: the differences which arise lead generally to compromises accepted by all.²

The federal councillors know nothing of the political responsibility which keeps the ministers of a cabinet government at the mercy of the caprices of a parliamentary majority. The chambers may adopt motions of want of confidence or censure against their conduct, reject the propositions which they have submitted, vote measures which they have combated, without their feeling obliged to resign. Whatever happens they finish their term of office,

¹ *Ibid.*, pp. 184-186.

² p. 189.

and it is only then that they incur a certain political responsibility, in the sense that their past conduct may prevent or secure their reelection, which suggests reflection as to the possible position of a cabinet in the United States.

The Swiss chambers consist of a National Council and a Council of States. The former contains 147 members, or in the ratio of one member to every twenty thousand of the total population. The number is apportioned to the cantons and subdivided by districts. Every Swiss citizen is entitled to a vote who is twenty-one years old and in the enjoyment of political rights. Every elector can be elected, except ministers of worship and federal functionaries. The National Council is renewed as a whole every three years.

The Council of States comprises forty-four deputies in the fixed ratio of two for each canton. The constitution does not provide either for their term of office or the mode of their election. Some are chosen directly by universal suffrage and some by the grand council of the canton. Some are chosen for three years and some for only one year.¹

The federal chambers assemble of their own accord in ordinary session on the day fixed by the rule. The ordinary session is at present divided into two parts, of which one begins on the first Monday in June, and the second on the first Monday in December. No authority can either prorogue or dissolve either of the two councils, nor can either of them do that without mutual consent. They can, however, be summoned in extra session by the Federal Council either of its own motion, or upon the demand of five cantons or of one quarter of the Chamber of Deputies. The sessions are generally short, each ordinary half-session not lasting more than three or four weeks, but of late years the chambers have often sat in extra session for twenty days, generally in March or April.²

The measures adopted by one chamber are sent to the other within two days after the vote is taken. If the other,

¹ Dupriez, *op. cit.*, p. 205.

² p. 206.

in its turn, adopts the whole measure, it returns it with approval. In case of disagreement, the measures pass back and forth till accord is established or becomes obviously impossible. The rejection of a measure in the chamber in which it is first submitted does not prevent its being taken up by the other.

The equality of the two chambers is sufficiently respected. The National Council has not acquired the preponderance of the French Chamber, and the situation of the Council of States is not to be compared with that of the Senate of the United States. The special influence of either chamber depends wholly upon the personal quality of the members.¹

In spite of the difference in the respective strength of parties in the two assemblies, their differences never result in serious conflicts. If one shows an energetic resistance to some measure adopted by the other, the other submits with a good grace to the opposition to its will.²

The federal chambers are not divided into two great political parties clearly separated; there is not on one side a governmental majority faithfully supporting the minister, and on the other a minority reduced to the work of opposition. The deputies in both chambers are divided into three principal groups, known as the Right, the Left, and the Centre.³

At the commencement of every session, the Federal Council lays before both houses all its proposals. These are often quite numerous, bearing upon all kinds of subjects. They include almost everything which is treated by the assemblies.

This initiative is not, however, always left to itself. The Federal Council, in this as in everything else, must obey the 'postulates' of the chambers. Sometimes it is directly asked by a vote to submit a measure for remedying certain abuses. Sometimes, on the other hand, one or the other chamber, rejecting a proposal submitted by the ministers, requests them to prepare another, based upon some principle which it lays down. The Federal Council always makes haste to conform to these invitations of the Assembly, even when they accompany the rejection of its proposals. More than this, the ministers are very cautious in making use of their initiative in important matters. Instead of presenting a measure of their own

¹ *Ibid.*, p. 209.

² p. 211.

³ p. 211.

accord, they sometimes seek to have a question raised by a member of the Assembly, in order that the body may invite them to study it and formulate measures. Public opinion shows itself generally more favorable to plans which have their origin in an assembly elected by the people and which directly represents it.¹

It will be observed that this procedure strongly resembles that of the British Parliament and of the New England town meeting, and not at all that of our city, state, and federal legislatures.

The budgets are prepared and discussed in Switzerland in the same form as ordinary laws. They are addressed to the chambers by the Federal Council, accompanied by a message in minute detail, giving explanations under each article, and explain and sum up the differences which the various figures of the plan present as compared with previous budgets.

No distinction is made between ordinary and extraordinary expenses. The budget is divided into two parts, devoted one to revenue and the other to expenditure, and the same division is made in correspondent sections.

After having been submitted to examination by a committee, the budget scheme is taken under discussion in the month of December. It is evident that the debate must be rapid, as the session hardly lasts three weeks and the Assembly has other business to attend to. The amendments to the budget are few, and generally referring to reductions of expense. The Swiss deputies do not seek to profit by budget debates to make changes in existing laws or to overturn the system of taxation, practices which would meet with popular disfavor. On the other hand, the economical habits and tendencies of the nation prevent the Chamber from being tempted too easily to an increase of credits. The Federal Council has, moreover, contrived an excellent method of anticipating and repelling the attacks of deputies on the federal treasury. It regularly presents a budget balanced by a big deficit. Thanks to this threat it is able to meet successfully all demands for increase of credits, and, on the other side, the deputies devote themselves to devising economies, rather than suggesting new expense. The budgets are therefore adopted very nearly as the Federal Council has presented them. But the ministers do not use all the credits placed at their disposal, and although the budgets give every year to the country the prospect of an important deficit, the accounts of the closed fiscal year always show a balance on the right side.²

¹ Dupriez, *op. cit.*, p. 218.

² pp. 225-227.

We see, therefore, that while in other countries the supremacy of the legislature has been gained by conquest, with disastrous consequences, in Switzerland it was freely conceded from the start, and has yet worked well. But this difference is manifestly explained by the nature and conditions of the country, and by the character, habits, and traditions of the people. While there may be much in her institutions which the United States may study with advantage, it certainly cannot include the application of this principle, which furnishes a test of what to avoid, as well as a standard of comparison.

Inasmuch as the only check upon the legislature is found in the popular referendum and initiative of legislation, supplying the place of the veto and executive resistance in other countries, it may be well to examine briefly its operation.

For changes in a constitution, whether federal or cantonal, the referendum is always compulsory, which is nothing more than what prevails in the States of our Union, and which, if constitutions are confined to general principles and the ultimate controlling power of government, seems not unreasonable. In some cantons it is compulsory for all laws, and in other cantons and the Confederation it is optional for ordinary laws.¹

A popular vote must be taken on any federal law if thirty thousand voters demand it, and from 1874, when the system was introduced, to March, 1893, such a demand was made in the case of 19 out of 169 laws; that is, on the average, about 1 law out of 9. Of these 19, the people ratified 6 and rejected 13, or about one-twelfth of all the statutes passed by the legislature. The effect of the referendum in the compulsory form upon ordinary laws is even more striking. In Zurich, one of the

¹ Abbott Lawrence Lowell, *International Journal of Ethics*, October, 1895.

largest and most democratic cantons, the people ratified 97 and rejected 31 of the 128 Acts passed by the legislature between 1869 and August, 1893. In the cantons where the compulsory form exists, the laws rejected varied from about a quarter to a half. The experience of the referendum in Switzerland is decidedly conservative, many of the rejected laws being such as are elsewhere regarded as identical with popular progress.¹ Moreover it is, like the executive veto, purely negative. Like that veto it is powerless as a positive instrument of government. That its corresponding futility has not been more apparent is owing to the character and circumstances of the people of Switzerland, precisely the causes which have put a check upon the evils of a despotic legislature. The remedy sought for these in the referendum as a substitute for increased power and responsibility in the executive has at least some support in logic and experience, while the initiative on the part of the people can boast of neither. On the latter point the experience of the federal laws is instructive. The first attempt was a demand from fifty thousand people for an amendment to the constitution, forbidding the slaughter of animals by bleeding, a measure of which the object, at least to a considerable extent, was not to prevent cruelty but to harass the Jews. The Federal Assembly urged the rejection of the bill as opposed to the principles of religious liberty guaranteed by the constitution, but it was nevertheless enacted by popular vote.

In two other cases the initiative has been taken in formulating a law — once by the Socialist party, demanding the right to labor; and once by the extreme Right, demanding the partition of the customs duties between the Confederation and the cantons. In both cases the people showed more sense than on the slaughter of animals question; they rejected the first demand by 308,289 votes to 75,880, and by

¹ Abbott Lawrence Lowell, *op. cit.*

twenty-two cantons to none ; and the second by 347,046 votes to 145,207, and by thirteen and a half cantons to eight and a half.

It is generally agreed in Switzerland that the popular initiative, as it is now established by the federal constitution, might at any time place the country in very considerable danger. From the moment that the regular representatives of the people are placed in such a position that they have no more to say in the matter than an irresponsible committee drawing up articles in a bar parlor, it is clear that the limits of sound democracy have been passed, and that the reign of demagoguery has begun. The people have no other safeguard than their own good sense.¹

The whole position of the legislative bodies is in Switzerland materially lowered by the referendum, or power of appealing directly to a popular vote upon proposed measures, which, as we have already seen, is the most remarkable feature in the Swiss Republic.²

¹ Numa Droz, *Contemporary Review*, March, 1896.

² Lecky, "Democracy and Liberty," Vol. I., Chap. IV., p. 375.

CHAPTER XXVIII

A STUDY OF DEMOCRACY

IN a former chapter have been considered some treatises upon the general principle of universal suffrage by writers who regard it with unmitigated dislike and contempt. It is in the light of what has been written in the later portion of this book that we may now examine a work, which, in its discussion of the practical results of experiments in representative government thus far made, is entitled by the thoroughness of its treatment, the impartial and philosophical spirit which it manifests, and the high reputation of the writer, to very serious consideration.¹

One general remark may be made as to the whole book, that it is concerned chiefly with what we have called the motive force of government and not with the machinery through which it is applied. Mr. Lecky does, indeed, examine the position of the House of Lords in the British constitution and also the preponderant power which has accrued to the House of Commons. He dwells upon the evils of unlimited power in the hands of a single chamber and the advantages of a definition of power in all the branches of government by a written constitution as it prevails in the United States. But as to the true adjustment of power, the balance of forces between executive and legislature, the importance of getting at the real mass of average public opinion, the immense force which may be derived from moral enthusiasm aroused by and excited on behalf of an executive power elected

¹ W. E. H. Lecky, "Democracy and Liberty," London, 1896.

periodically by a whole people, and at the same time held in control by a jealous and vigilant legislature; of any consideration of these things there is no trace. Mr. Lecky analyzes with great force and detail the effect, actual and probable, of democracy upon government; he leaves almost untouched, what is perhaps an equally fertile field, the effect of government upon democracy.

To European writers constitutional government implies either a limited monarchy or else a republic like those of France and Switzerland. In either case all that the voters have to do is to elect the legislature and the legislature makes and controls the executive — in Great Britain the ministry, in France nominally a president but in practice again the ministry, in Switzerland the Federal Council. In Great Britain the ministry has an indirect appeal to the country through a dissolution of Parliament, and it is this which has raised it in two centuries to be the highest development of popular government in the world. In no other European constitutional government is there any such appeal to the people as a whole, and that is at least a principal reason why the others have to such an extent come to failure. There is nowhere in the world anything like our popular election of president, governor, and mayor, and Europeans do not understand at all the significance of it. Even Mr. Bryce has failed to grasp it, and Mr. Bagehot, one of the most sagacious writers upon the modern English executive power, totally misunderstands it. This is certainly not surprising, in view of the perversion of its meaning through the ambition and encroachments of the legislatures, which have everywhere, from Congress down through the States and cities, striven, with only slight differences of success, to reduce the executive from being an agent of public opinion, charged with carrying on the government for the benefit of and in accordance with the will of the whole people, to be an

instrument of faction and party intrigue for the purpose of plundering the people on behalf of private and local interests.

The real questions with regard to popular government may be reduced to two: 1. Does the great majority of the population in countries like Great Britain, France, and the United States really desire good government with order, economy, and justice to all classes, or does it aim directly or indirectly at the plunder of the rich by the poor, with all the social disorder which that involves? 2. As the tide of democracy rises do the prevailing political methods tend to secure the best results of average public opinion, or to defeat that public opinion and throw government into the hands of comparatively small classes to be used for their own private interests, regardless of the public welfare and wishes?

Upon his first page Mr. Lecky refers to the principles of English parliamentary government in the eighteenth century which found their best expression and defence in the writings of Burke.

It was then almost universally held that the right of voting was not a natural right but a right conferred by legislation on grounds of expediency, or, in other words, for the benefit of the state.¹

It is precisely upon this principle that the whole argument of the present work is based. With abstract questions of natural right and justice we have nothing to do. If universal suffrage is best adapted to promote not merely the greatest happiness of the greatest number, but the highest average of happiness for the whole people, then its existence is justified; otherwise not. But in making this concession we demand one in return. Mr. Lecky assumes, throughout in implication and sometimes in the letter, that intelligence, education, and property have a

¹ Lecky, *op. cit.*

natural right to govern. It is worthy of note also that he couples the word 'loyalty' with these qualities, as if it necessarily and exclusively accompanied them. The limitation is the same as with universal suffrage. If they secure the highest average of happiness, then, and then only, the claim is good. But it will not do to beg the question. Thus probably the highest point of intelligence, or, to define that strictly, of intellectual power as applied to government, is found in the first Napoleon, yet it did not prevent his rule from being, regard being had to the then state of the world, one of the most arbitrary, oppressive, and cruel in history. It is not shown that intelligence or education offers any safeguard against the most selfish abuse of class power. Nor is intelligence, again, a necessary adjunct of property. The highest intellectual and moral qualities are often developed in narrow circumstances and are quite as legitimate fruits of struggle and sacrifice as of ease and luxury, or even of the acquisition of wealth. As Mr. Lecky himself says : —

Class bias often does more to distort than education to expand the intellect, and rectitude of moral judgment is by no means proportioned to intellectual development.¹

Property itself is no more a matter of abstract natural right than voting. Experience shows that the average welfare of humanity is best promoted by securing the individual right of property in accumulation, possession, and transmission. If it could be demonstrated — which as the world is made it evidently cannot be — that the institution of private property is injurious to the permanent and average welfare of the mass of mankind, and that a corresponding benefit could be obtained from a community of goods, then there is no law human or divine which should prevent the distribution.

¹ "History of England in the Eighteenth Century," Vol. III., Chap. XI., p. 238.

Mr. Lecky quotes¹ Paley, writing in the latter part of the eighteenth century.

Before we seek to obtain anything more, consider duly what we already have. We have a House of Commons composed of 548 members, in which number are found the most considerable landholders and merchants of the kingdom; the heads of the army, the navy, and the law; the occupiers of great offices in the state; together with many private individuals eminent by their knowledge, eloquence, and activity. If the country be not safe in such hands, in whom may it confide its interests? If such a number of such men be liable to the influence of corrupt motives, what assembly of men will be secure from the same danger? Does any new scheme of representation promise to collect together more wisdom or to produce firmer integrity?²

Yet this was a time when there were between fifty and sixty offences for which capital punishment was inflicted, when debtors passed their lives languishing in the foulest prisons, when offences in the press were severely punished, when parliamentary corruption was at its height, and when civil disorders occurred, like the Wilkes riot in 1768 and the Gordon riots in 1780, so powerfully described by Mr. Lecky, of which the last half of the nineteenth century has known nothing.

The English constitution of the eighteenth century might also be tested in other ways. It is incontestable that under it England had enjoyed for a long space of time much prosperity, a far larger measure of steady freedom, and a far more equitable system of taxation than any of the great states of the Continent. Under this form of government she passed successfully through the dangerous internal crisis of a long-disputed succession; she encountered successfully foreign dangers of the first magnitude, from the time of Louis XIV. to the time of Napoleon; and although her history was by no means unchecked by faults and disasters, it was under this system of government that she built up her vast Indian Empire and largely extended and organized her colonial dominions.

This was because England was the freest country then existing in Europe, and it is because the power of public

¹ *Op. cit.*, Chap. I., p. 6.

² "Moral Philosophy," Vol. II., pp. 220, 221.

opinion has gone on broadening and deepening under what may in a large sense be called the strongest executive government in Europe, that she has been spared the revolutions which that continent has passed through.¹

Parliament was essentially a machine for taxing, and it was therefore right that those who paid taxes should have a decisive voice, and that those who chiefly paid should chiefly control. The indissoluble connection between taxation and representation was the very mainspring of English conceptions of freedom. That no man should be taxed except by his own consent was the principle which was at the root of the American Revolution. It was the chief source of all extensions of representative government, and it was also the true defence of the property qualifications and voting privileges which concentrated the chief power in the hands of the classes who were the largest taxpayers. No danger in representative government was deemed greater than that it should degenerate into a system of veiled confiscation—one class voting the taxes which another class was compelled to pay.²

Let us now turn to his "History of England in the Eighteenth Century."

The constitution of the House of Commons was indeed such that, even if there had not been systematic corruption in the constituencies and among the members, it would have had but little claim to be regarded as a true representative of the nation. In a book published in 1774 it was shown by very careful computations that out of the 513 members who sat for England and Wales, as many as 254 represented less than 11,500 voters, and as many as 56 about 700 voters. Of these 56 members no one had a constituency of 38 electors, and 6 had constituencies of not more than 8. The county of Middlesex, including London and Westminster, returned only 8 members, while Cornwall returned 44. And yet, taken as a whole, the representation of England and Wales was far more real and independent than that of Scotland.³

It must be remembered that this state of things continued practically unchanged down to the year 1832. If, as Mr. Lecky thinks, the constituencies have been of late unduly enlarged it may be said that the pendulum has

¹ "Democracy and Liberty," Vol. I., p. 7.

² *Ibid.*, p. 2.

³ Vol. III., Chap. XI., p. 188.

not yet reached a full swing the other way, and that a reasonable average has not yet been exceeded.

It will probably now appear to most persons that the reverence with which Burke looked upon the constitution as it existed in his day was exaggerated even to extravagance. The corruption and indeed absurdities of the representative system could hardly be overstated; and experience, which is the one sure test in politics, has decisively shown that it was possible to reform the abuses of Parliament, and to allay the deep discontent of the nation without impairing, for any good purpose, the efficiency of government.¹

Surely after that lesson there is nothing at the end of the nineteenth century to cause hopeless discouragement. We need not, however, spend more time upon past history. Mr. Lecky's position is very clearly defined.

It does not appear to me that the world has ever seen a better constitution than England enjoyed between the Reform Bill of 1832 and the Reform Bill of 1867.²

His terror is excited by what has happened since the latter date.

Before entering upon the latter question, however, it will be instructive to consider his views of modern French history.

In 1792 the Legislative Assembly very nearly established manhood suffrage, though it was qualified by the system of double election. The connection of voting with property and taxation was abolished. . . . It was under this system that the Convention—the most bloody and tyrannical assembly of which history has any record—was elected.³

The obvious inference is, that the one was cause and the other effect, than which it is hardly possible to imagine a proposition more unjust, illogical, and misleading. We have tried to show that the seed had been sown and the plant carefully nurtured during more than two cen-

¹ "History of England in the Eighteenth Century," Vol. III, Chap. XI., p. 212.

² "Democracy and Liberty," Vol. I., p. 18.

³ *Ibid.*, p. 11.

turies of French history, and that the harvest was brought to full maturity by the sudden and violent annihilation of all executive power and the assumption of all government, in the midst of a starving population, by a body of one thousand men, without training, traditions, organization, or previous concert. This view may be inadequate and incorrect, but it has at least the merit of paying some attention to accompanying facts.

Universal suffrage having been shortly after suppressed was not revived again till 1848.

But the theory that each change in the constitution should be ratified by a direct popular vote showed more vitality, and successive governments soon learned how easily a plebiscite vote could be secured and directed by a strong executive, and how useful it might become to screen or to justify usurpation.¹

The other lesson has not yet been learned, how a strong executive—the first necessity of all, but especially of popular governments—may be controlled and restrained from abuse of power by a direct popular vote, acting under the guidance of a watchful and criticising legislature limited to that function and not striving to get possession of and to carry on the government by itself.

Constitutional government was carried out during those years (1830–48) faithfully, and in some respects even brilliantly, but it was tainted by much corruption, and rested on an electorate of much less than a quarter of a million.²

That is to say, it suffered from the same defects which in England after half a century of struggle had led to the first parliamentary reform; with this difference, that in England the defects were upheld by an organized aristocracy, based upon a long and in many respects glorious history, while in France they rested upon a mere *bourgeois* plutocracy without class traditions or moral influence of

¹ *Ibid.*, p. 12.

² p. 13.

any kind. The men who attempted to imitate the example which had worked so successfully in England were in politics little more than children, who did not understand it at all. Their bungling attempts resulted in an explosion for which the materials had been carefully prepared during more than two hundred years. It swept away the whole executive system and established the despotic government of a single chamber, precisely as the first revolution did, with a speedy and corresponding evolution of military despotism. What was there in all this condemnatory of universal suffrage as a principle?¹

Mr. Lecky speaks with distrust of the Third Republic, but it has at least done what no other government of the country has done in a hundred years,—preserved peace, internal and external, as far as Europe is concerned, for more than a quarter of a century, and has at the same time allowed a freedom of the press and of public meeting greater than the country has ever before enjoyed. Of the instability of ministries in France and its effects we have elsewhere spoken, but Mr. Lecky's heaviest charge is against the finances of the Republic, which, it must be admitted, are extremely threatening. But he himself furnishes the answer.

The evils, however, that might in this department be feared in England from the omnipotence of the House of Commons have been

¹ Speaking of Lamartine he says: "In a great crisis he proved brave, honest, humane, and well meaning, and he could judge large social questions with wisdom and moderation, but he had neither the true strength nor practical talent that are needed in the government of men, and he was apt to be led astray by a childlike and unrestrained vanity.

"His popularity was for a time so great that ten departments and more than two millions of voters simultaneously elected him to the National Assembly, without any solicitation on his part. But his star soon faded; socialistic attacks on property began to dominate at Paris, and under the terror of these attacks the great mass of voters began to turn towards a saviour of society." (*Op. cit.*, p. 30.) Does not this furnish a justification of the two millions of voters, both in supporting him at first and in not continuing to do so?

greatly mitigated by two facts. The one is that a very large proportion of the taxes of the country are permanent taxes, and are therefore not the subjects of annual debates. The other is the rule of the House of Commons, which I have mentioned in a former chapter, that no petition, and no motion for a grant or charge upon the public revenue, can be received unless it is recommended by the ministers of the Crown. Though this rule, giving the responsible ministers the sole right of proposing taxation, rests upon no law, but simply on a standing order of 1708, it is no exaggeration to say that it is one of the most valuable parts of the British constitution. In the great changes that have taken place in the disposition and balance of powers, many of the old constitutional checks have become obsolete, inoperative, or useless, but the whole tendency of modern politics has only increased the importance of the provision which places the initiation in matters of finance exclusively in government hands. In the present state of parliaments, and with the motives that at present govern English public life, it is difficult to exaggerate either the corruption or the extravagance that might arise if every member were at liberty to ingratiate himself with particular classes of interests by proposing money grants in their favor.¹

If we consider that this last sentence describes exactly the conditions of finance which prevail in France and the United States, can we wonder at the results which flow from them? Unless he can show, which he certainly has not done, that these conditions necessarily follow from universal suffrage, they cannot be used as an argument against it.

Speaking of Rousseau, Mr. Lecky condemns what he lays down as his three fundamental propositions.

Every man should have a vote, and a vote of the same value; a representative should be nothing more than a delegate under the absolute control of the constituency, and no law can have any binding force which has not been directly sanctioned by the whole community (referendum). His whole system rested on the idea of natural and inalienable rights.²

¹ *Ibid.*, Chap. IV., p. 345. It is quite possible that the London county council may yet furnish an illustration of this latter alternative. Cf. *ante*, Chap. XXV.

² *Ibid.*, p. 10.

Setting apart natural right and contemplating only political expediency, that is, what will best promote the average welfare of the whole people, here are totally different things. The first proposition may be, as we maintain that it is, sound and correct. The others do not in the least follow from it, and may be, as we believe that they are, unnecessary and inexpedient.

As a sample of fairness towards the French take the following :—

Or, study that most hideous story of our century—the Russian persecution of the Jews—and then remember that it was on the morrow of this persecution that the French democracy threw itself, in a transport of boundless, unqualified enthusiasm, into the arms of Russia, and declared by all its organs that French and Russian policies were now identified in the world. Few sadder, yet few more significant, spectacles have been witnessed in our time than this enthusiastic union, in 1893, of the chief democracy of Europe with its one great persecuting despotism.¹

Probably not one Frenchman in a thousand knew anything about the Russian persecution of the Jews. It was partly a feeling of gratitude for Russian protection from the threatened German attack in 1875, and partly the hope of support in future revenge and the recovery of the lost provinces, unwise and unchristian, perhaps, but very different from the state of mind which Mr. Lecky denounces.

To return to the golden era of 1832–1867. It would not be difficult to show that the first parliamentary reform was regarded, by what Mr. Lecky calls the wealthy, intelligent, and educated class, with quite as much dread and dislike as he feels towards the growing rule of democracy. Certainly, the resistance which they made, even to the very verge of civil war, points to this conclusion, unless we regard it as resting upon pure selfishness, which is contrary to all Mr. Lecky's canons. How would the fol-

¹ Lecky, *op. cit.*, p. 52.

lowing have sounded to the men of whom the Duke of Wellington was the type?

Though the Reform Bill undoubtedly changed the centre of political power in England, it left the leading characteristics of the old system undestroyed. Property was specially and strongly represented, and the Reform Bill brought great masses of hitherto unrepresented property, as well as great centres of population, into the circle of the constitution. The middle class, which now became the most powerful in the political system, was one which could be excellently trusted with a controlling power. Aristotle long since observed that it is to this section of the community that the chief power in government may be most wisely and most profitably given. It is not the class most susceptible to new ideas or most prone to great enterprises, but it is distinguished beyond all others for its political independence, its caution, its solid practical intelligence, its steady industry, its high moral average. It also, perhaps, feels more promptly and more acutely than any other class the effects of misgovernment, whether that misgovernment takes the form of reckless adventure and extravagant expenditure, or whether, in the not less dangerous form of revolutionary legislation, it disturbs settled industries, drives capital to other lands, and impairs national credit, on which the whole commercial system must ultimately rest.¹

Why are not the following included in the types of the middle classes?

It would, I believe, be a mistake to suppose that under the new conditions wealth will disappear, or even exercise a greatly diminished power in politics, but the rich men who will chiefly enter Parliament are not the kind who are most desirable. Three classes appear to have an increasing prominence. There are those who, having amassed large fortunes in trade, commerce, or manufacture, desire above all things social position, and are prepared to sacrifice large sums to attain it. The social precedence which a seat in Parliament affords, and the possibilities of rank which are open to every rich man who steadily supports his party, become their guiding motives, and very often shape the whole course of their political calculations. There are also prosperous lawyers, who enter Parliament for professional objects, knowing that it is the path which leads directly to the chief honors in their profession; and there is the large class of business men connected with public companies, who find a political position useful to their financial enterprises. The increasing number of directors

¹ *Ibid.*, p. 17.

in Parliament, and the desire of companies to have members of Parliament for their directors, are significant signs, not, I think, of good omen for the purity of politics. As state functions multiply, including many things that were once left to private commercial enterprise, the position of member of Parliament is likely to have an increasing value in the fields of patronage, industry, and finance. Men of these different classes are often among the most dangerous of demagogues. Private aims predominate with them over public ones. If they can attain them, they care little for a large expenditure or sacrifice of money, and their special interests are usually only very slightly identified with the permanent interest of the country.¹

The object of Mr. Lecky's fears may be summed up in one passage.

The complete submission of all taxation to the will of a mere numerical majority is an end which we have not yet fully attained, but towards which we are manifestly travelling. Every few years something is done in this direction, either by lowering the suffrage or by abolishing *ex officio* guardians of the poor, or by extinguishing plural voting or by suppressing or weakening property qualifications. The inevitable result is to give one class the power of voting taxes which another class almost exclusively pay; and the chief taxpayers, being completely swamped, are for all practical purposes completely disfranchised. As I have already noticed, it would be difficult to conceive a more flagrant abandonment of that principle about the connection between taxation and voting which in former generations was looked on as the most fundamental principle of British freedom.²

These are pure questions of expediency. In the first place, the aggregate of property held and even of taxes paid, directly and indirectly, by the mass of what Mr. Lecky would call the lowest class, bears no insignificant proportion to that of the highest classes. If these minute portions which make up such a vast aggregate are to be represented at all, it must be through the votes of the individual possessors. Whether those having more property should have more votes, as in the German class votes or the English plural voting, must depend either upon natural right, which we have assumed to discard, or upon

¹ Lecky, *op. cit.*, Chap. II., p. 198.

² *Ibid.*, p. 27.

its effect upon the average happiness of the whole people, present and future, which is an open question. It cannot be settled by declamations about intelligence and education.

But we may appeal to Mr. Lecky himself. In his "History of England in the Eighteenth Century," speaking of taxation without representation, he says : —

The opponents of the American claims were able to reply, with undoubted truth, that at least nine-tenths of the English people had no votes; that the great manufacturing towns, which contributed so largely to the public burdens, were for the most part wholly unrepresented; that the minority in Parliament voted only in order to be systematically overruled; and that, in a country where the constituencies were as unequal as in England, that minority often represented the large majority of the voters. It was easy to show that the financial system of the country consisted chiefly of a number of particular taxes imposed on particular classes and industries, and that in the great majority of cases these taxes were levied, not only without the consent but in spite of the strenuous opposition of those who paid them. The doctrine that whatever a man has honestly acquired is absolutely his own, and cannot, without robbery, be taken from him, except by his own consent, if it were applied rigidly to taxation, would reduce every society to anarchy; for there is no tax which, on such principles, a large proportion of the taxpayers would not be authorized in resisting.¹

According to this reasoning, the present condition of affairs of which he complains is at least not unprecedented.

Many of those who are doing their best to reduce the influence of education and intelligence in English politics are highly cultivated men, who owe to university education all that they are, though they are now imitating — usually with awkward and overstrained effort — the rant of the vulgar demagogue. They have taken their line in public life, and some have attained their ends. I do not think that the respect of honest men will form any large part of their reward.²

Is it not just possible that they may believe that they are promoting the average welfare of the people?

¹ "History of England in the Eighteenth Century," Vol. III., Chap. XII., p. 354.

² "Democracy and Liberty," p. 25.

Every one who will look facts honestly in the face can convince himself that the public opinion of the nation is something quite different from the votes that can be extracted from all the individuals who compose it.¹

If that is so, we regret our inability to look facts honestly in the face.

There are multitudes in every nation who contribute nothing to public opinion; who never give a serious thought to public affairs, who have no spontaneous wish to take any part in them; who, if they are induced to do so, will act under the complete direction of individuals or organizations of another class. . . . The demagogue will try to persuade the voter, that by following a certain line of policy every member of his class will obtain some advantage. . . . He will also appeal persistently and often successfully to class jealousies and antipathies. . . . If the poorest, most numerous, and most ignorant class can be persuaded to hate the smaller class and to vote solely for the purpose of injuring them, the party manager will have achieved his end. . . . As far as the most ignorant class have opinions of their own, they will be of the vaguest and most childlike nature. . . . A bad harvest or some other disaster, over which the government can have no more influence than over the planets, will produce a discontent that will often govern dubious votes and may perhaps turn the scale in a nearly balanced election.²

The question is, whether, under improved education and better organization of government, more general interest cannot be excited and other motives substituted for these, with a consequent effect upon the character of the people. It is for this reason that we have laid stress upon the importance of exalted personality in government, which the people may look up to and by which their enthusiasm may be aroused.

The men who vote through such motives are often most useful members of the community. They are sober, honest, industrious laborers; excellent fathers and husbands; capable of becoming, if need be, admirable soldiers [and why not citizens?]. They are also often men who, within the narrow circle of their own ideas, surroundings, and immediate interests, exhibit no small shrewdness of judgment; but they are as ignorant as children of the great questions of

¹ Lecky, *op. cit.*, p. 18.

² pp. 18-20.

foreign, or Indian, or Irish, or colonial policy, of the complicated and far-reaching consequences of the constitutional changes, or the great questions relating to commercial or financial policy, on which a general election frequently turns. If they are asked to vote on these issues, all that can safely be predicted is that their decision will not represent either settled conviction or real knowledge.¹

We would ask Mr. Lecky whether in the average membership of the London clubs or even of business men — we might almost include members of Parliament — he does not find nearly as great ignorance with quite as great class prejudice. The trouble is in putting questions which both are incompetent and the former class at least do not wish to decide. The really available force is moral enthusiasm aroused by personality.

There is another and very different class, who are chiefly found in the towns. They are the kind of men who may be seen loitering listlessly around the doors of every gin-shop — men who, through drunkenness, or idleness, or dishonesty, have failed in the race of life; who either never possessed or have wholly lost the taste for honest continuous work; who hang loosely on the verge of the criminal classes, and from whom the criminal classes are chiefly recruited. With a very low suffrage they become an important element in many constituencies. Without knowledge and without character, their instinct will be to use the power which is given them for predatory and anarchic purposes. To break up society, to obtain a new deal in the goods of life, will naturally be their object.²

We do not know what proportion these may form in Great Britain, but are very sure that in the United States and even in New York city they form but a small minority. Unfortunately our political methods are such as to give them undue weight in government.

Of course Mr. Lecky details at length the scandals of American public life, supported by quotations from American authors. We have no wish to disguise or palliate them, holding that it would be foolish to do so. What we do deny *in toto* is, that "it is the plain

¹ *Ibid.*, p. 20.

² p. 20.

inevitable consequence of the application of the methods of extreme democracy applied to municipal [or any department of] government"; preferring to set off against this a saying of the London *Spectator*, that "the failures of government in the United States are not the result of democracy, but of the craftiest combination of schemes to defeat the will of democracy ever devised in the world."

Even Mr. Lecky acknowledges the difference between public and private life.

In hardly any other country does the best life and energy of the nation flow so habitually apart from politics. Hardly any other nation would be more grossly misjudged if it were mainly judged by its politicians and its political life.¹

And he adds in a note:—

I may add the judgment of one of the most serious and impartial of American historians: "It is certain that in no Teutonic nation of our day is the difference so marked between the public and private standards of morality as in the United States. The one is lower than it was in 1860; the other, inconsistent as it may seem, is higher." (Rhodes, "History of the United States from the Compromise of 1850," pp. 111, 143.)

It seems a strange paradox that a nation which stands in the very foremost rank in almost all the elements of a great industrial civilization, which teems with energy, intelligence, and resource, and which exhibits in many most important fields a level of moral excellence that very few European countries have attained, should permit itself to be governed and represented among the nations in the manner I have described. How strange it is, as an Italian statesman once said, that a century which has produced the telegraph and the telephone, and has shown in ten thousand forms such amazing powers of adaptation and invention, should have discovered no more successful methods of governing mankind.²

This is because attention has been turned to the one and has not yet been to the other. We are sanguine enough to believe that such discoveries will yet be made and when they are made that universal suffrage, as it prevails

¹ *Op. cit.*, p. 94.

² p. 95.

in the United States, is the most available force for putting them in operation which the world has ever seen. The first of these conclusions is confirmed by Mr. Lecky.

There is one thing which is worse than corruption. It is acquiescence in corruption. No feature of American life strikes a stranger so powerfully as the extraordinary indifference, partly cynicism and partly good nature, with which notorious frauds and notorious corruption in the sphere of politics are viewed by American public opinion. There is nothing, I think, altogether like this to be found in any other great country. It is something wholly different from the political torpor which is common in half-developed nations and corrupt despotisms, and it is curiously unlike the state of feeling which exists in the French Republic. Flagrant instances of corruption have been disclosed in France since 1870, but French public opinion never fails promptly to resent and to punish them. In America notorious profligacy in public life and in the administration of public funds seems to excite little more than a disdainful smile. It is treated as very natural — as the normal result of the existing form of government.¹

The subject has not yet been taken up in earnest for the reason that men do not see how to attack it. Leaders are the first requisite for action. Mr. Lecky does full justice to the spirit and temper of the people, both of the North and South during and after the Civil War. He encounters also the same paradoxes which puzzled Mr. Bryce.

The general legislation in America also ranks very high. Many of the worst abuses of British law either never existed there, or were redressed at a much earlier period than in England. Her penal code, her educational laws, her laws about the sale and transfer of landed property, were for a long period far better than those of Great Britain; and the fact that no religious disqualifications were recognized saved her from struggles that have largely occupied many generations of English reform. I do not think that, in modern times, legislation has been better, or the spirit of reform more active, in the republic than in the monarchy, but I believe the best observers on

¹ p. 93. Compare with this the remark (p. 346) that "In truth, the English people, though they have always been extremely tenacious of their right of making their own laws, have usually been singularly patient of abuses in administering them."

both sides of the Atlantic recognize the two systems as substantially on the same plane of excellence, though each country may learn many things from the other.¹

We must question another of Mr. Lecky's inferences.

Universal suffrage, which to-day excludes free trade from the United States, would certainly have prohibited the spinning jenny and the power loom. It would certainly have forbidden the threshing machine. It would have prevented the adoption of the Gregorian Calendar.²

The fallacy is in the major premise. It is not universal suffrage which excludes free trade from the United States. It is the crafty combination of private interests described by the *Spectator*, and which, in the absence of any public leadership, deceives the people with the cabalistic word 'protection.'

Mr. Lecky's grievances against Ireland may be summed up in two items, — the lowering of the suffrage and the proposition to grant Home Rule, with the methods taken to promote it. With reference to Home Rule we express no opinion, looking upon it as one of the most difficult subjects with which any European government has to deal. But what we have regarded with profound admiration for the last twenty years is the patient forbearance with which the English people, under a consciousness of centuries of misgovernment and a desire to make any possible reparation, have submitted to obstruction in the House of Commons and to public scandals and delays of business, which a decided expression of public opinion would probably have put an end to at any time.

No one who knew Ireland doubted that a lowering of the suffrage would throw a still larger amount of power into the hands of a poor, ignorant, and disaffected peasantry, completely under the influence of priests and agitators; that it would weaken, and in many districts virtually disfranchise, loyalty, property, and intelligence; that it would deepen the division of classes; that it would enormously

¹ *Op. cit.*, p. 100.

² p. 22.

increase the difficulty of establishing any form of moderate and honest self-government. Nothing, indeed, is more certain than that the elements of good government must be sought for in Ireland in a higher electoral plane than in England. The men who introduced and carried the degradation of the Irish suffrage were perfectly aware of what they were doing. They acted with their eyes open; they justified themselves, in the true spirit of the *Contrat Social*, on the plea that they would not allow a political inequality to continue, and they probably believed that they were playing a good card in the party game.¹

A reference only is needed to Mr. Lecky's "History of England in the Eighteenth Century," narrating the different treatment which has been applied to Ireland and Scotland, to explain the actual condition of the Irish people. That they are what they are is the direct result of government by a privileged class, both at home and in England. We have constantly maintained that the character of government depends less upon that of the people than that of a people does upon its government, but Mr. Lecky's own testimony will be in point.

Invectives against nations and classes are usually very shallow. The original basis of national character differs much less than is supposed. The character of large bodies of men depends in the main upon the circumstances in which they have been placed, the laws by which they have been governed, the principles which they have been taught. When these are changed the character will alter too, and the alteration, though it is slow, may in the end be very deep. To trace the causes, whether for good or ill, that have made nations what they are is the true philosophy of history. It is mainly in proportion as this is done that history becomes a study of real value, and assuredly no historical school is more mischievous or misleading than that which evades the problem by treating all differences of national character as innate and inexplicable, and national crimes and virtues as the materials for mere party eulogy or party invective. Mill justly says: "Of all vulgar modes of escaping from the consideration of the effect of social and moral influences on the human mind the most vulgar is that of attributing the diversities of conduct and character to inherent national differences." ("Political Economy," I, p. 390.)²

¹ *Ibid.*, p. 23.

² "History of England in the Eighteenth Century," Vol. II., Chap. V., p. 79.

If the history of government for three centuries is sufficient to explain any amount of degradation in the Irish people, then the reverse process of recovery may well begin with the infusion of manhood and independence, and the sense of moral responsibility which comes from having a voice in the government under which one lives. We hold the extension of the suffrage in Ireland to be justified on the same grounds upon which it was given to the negroes after our Civil War. If it had been left to the Southern States to determine the political relations of the white and colored races, we should have had a conflict on our hands which the war would not have settled at all. Notwithstanding all the manifest drawbacks which have made themselves felt, we believe the condition of the South, both for itself and the Union, to be far better than if the suffrage had been restricted to the whites. When the masses of the people have votes the well-to-do and educated are compelled, for their own interest and safety, to look after them, which no other process of government in history has ever insured that they would do. It is the instrument for discovering what these masses are thinking and feeling, what is the character and tendency of the immense force of public opinion and how it may be brought to bear. Endless time and patience are given by science to research after minute facts, apparently of no practical value, because behind such facts have lain hidden the secrets of those material forces which have changed the face of the world. Can there be a more important study for science than the depths of human thought and passion, desire and aversion, justice, humanity, morality, and their opposites, which universal suffrage more than any other test can reveal? The highest mountains, with all their grandeur, are no more than pimples upon the earth's surface, and the highest manifestations of genius show hardly more difference from the average workings of the human

mind. How the results thus obtained may be transmuted into government is a separate question of machinery, just as the force of electricity is wholly apart from the mechanical appliances which have achieved such immense results.

In his "History of England in the Eighteenth Century," Mr. Lecky gives an interesting account of the development of the public press, and weighs its advantages and disadvantages, with a balance in favor of the former. It may well be doubted whether a free press could be permanently maintained without universal suffrage either as cause or effect, and whether there is any class to which the control of it could be safely trusted. What has been said of the effect of government upon the character of the people is almost equally true with regard to the public press. It would not be difficult to show that the defects of the newspapers in the United States correspond very closely with those of the government.

Mr. Lecky admits that the evils he dreads are mainly prospective.

The reader will, I hope, understand that in the foregoing remarks I am describing tendencies which appear to me to be in operation, and not fully accomplished facts. It would take a long time and many disastrous revolutions to break down the firm texture of English political life. The deliberate judgment of the constituencies on a great question which strongly arouses national feeling will, I believe, seldom be wrong, though there is an increased danger that they may be for a time misled, and that such influences as I have described may obtain a temporary ascendancy in the House of Commons.¹

Not less conspicuous is the improvement that has taken place in the decorum, civilization, and humanity of the bulk of the poor; in the character of their tastes and pleasures; in their enlarged circle of interests; in the spirit of providence which, under the influence of savings banks and kindred institutions, has arisen among them. The skilled artisans in our great towns, within the memory of living men,

¹ "Democracy and Liberty," p. 200.

have become, not only the most energetic, but also one of the most intelligent and orderly, elements in English life. No one who has come into close contact with their political organizations, or trade unions, or mechanics' institutes, or free libraries, or who has watched the working-class audience of some great scientific lecturer, will deem this an exaggeration. The spirit of humanity has immensely increased, both in the form that shrinks from the infliction of suffering and in the form that seeks out suffering in order to alleviate it. Churches and creeds will come and go; but the best index of the moral level of a community is to be found in the amount of unselfish action that is generated within it. I do not believe that there has ever been a period in England, or in any other country, when more time, thought, money, and labor were bestowed on the alleviation of suffering, or in which a larger number of men and women of all classes threw themselves more earnestly and habitually into unselfish causes.¹

And after describing what has been done in India and England, and mentioning the names of Darwin and Gordon, he concludes : —

A country which has produced such men and such works does not seem to be in a condition of general decadence, though its constitution is plainly worn out, though the balance of power within it has been destroyed, and though diseases of a serious character are fast growing in its political life. The future only can tell whether the energy of the English people can be sufficiently aroused to check these evils, and to do so before they have led to some great catastrophe.²

If we are to judge a government by its effect on the character of the people the result so far is not bad. To us the most striking thing about the celebration of the sixtieth year of Queen Victoria's reign was the spirit of contentment and loyalty which made itself heard at home and abroad, the absence of class hostility, and the total want of any disposition to resort to violence, even in the great strikes and lockouts, which appear sometimes as if they would threaten the commercial supremacy of Great Britain.

We must remember again that thirty-eight millions of

¹ Lecky, *op. cit.*, p. 205.

² p. 211.

inhabitants are supported in this state of well-being in a space of territory which one hundred years ago contained only fifteen millions under far worse conditions. No doubt this is owing in large part to the improvements of modern science, but also in a great measure to confidence in, and satisfaction with, a firm and just government, which, upon the whole, is administered in the interest of the mass of the people.

If no such favorable comparison can be drawn in the United States, it is because the people a hundred years ago were the most favorably situated in the world as regards material and moral welfare, because there has been a large proportionate infusion of foreign population, not always of the best kind, but most of all because there has been, for reasons which we have set forth, no such relative improvement of government as has taken place in Great Britain. We believe, however, that here also public opinion and universal suffrage are sound and available forces for improvement in the future.

I do not think that any one who seriously considers the force and the universality of the movement of our generation in the direction of democracy can doubt that this conception of government will necessarily, at least for a considerable time, dominate in all civilized countries, and the real question for politicians is the form it is likely to take, and the means by which its characteristic evils can be best mitigated.¹

If that is so, and considering the tremendous forces involved, it is important to be very careful about generalizing from isolated facts, even if correctly stated, and not to assume premises too easily. Mr. Lecky states what has almost come to be considered as an axiom, that,

Equality is the idol of democracy, but with the infinitely various capacities and energies of men this can only be attained by a constant, systematic, stringent repression of their natural development.²

¹ *Ibid.*, p. 212.

² *Ibid.*

We do not regard the main proposition as at all proved. On the contrary, democracy is strongly given to hero-worship. On the eve of the election of 1895,

Lord Rosebery clearly and emphatically told the country that the real and supreme question at issue was the House of Lords, and that Home Rule, and all the other government measures, were involved in the destruction of what he somewhat absurdly calls its 'legislative preponderance.'¹

Mr. Lecky thinks that this was going too far, but says : —

At the same time the question of the upper House was in the very foreground of the battle and was as clearly at issue as it is ever likely to be in England, unless she should adopt the system of a referendum.² . . . The country had now the opportunity of expressing its opinion about these men, their objects, and their methods, and it gave an answer which no sophistry could disguise and no stupidity could misunderstand. The complete, crushing, and unequivocal defeat of the Radical party in 1895 is certainly one of the most memorable events in the present generation. No circumstance of humiliation was wanting. The majority against the late government was greater than any which had been seen in England since the election of 1832. In nearly every portion of the kingdom, and in town and country alike, the verdict was the same. In constituencies where the members of the party escaped disaster they usually did so by a greatly decreased vote. But most conspicuous of all was the emphatic condemnation of the New Liberalism, not only in London, but also in the overwhelming majority of the great provincial towns, where industrial life is most intense, where vast masses of workingmen are agglomerated, and where the older Liberalism had found its strongest and most enthusiastic support.³

It is our belief that even in the United States there is no popular jealousy of superiority, either in wealth, intellect, or social position, provided they are properly acquired or exercised. The appearances to the contrary are mainly caused by our unfortunate methods of government, which are steadily fomenting the strife and exasperation between classes. What democracy does do is to

¹ Lecky, *op. cit.*, p. 362.

² p. 363.

³ p. 362.

increase very greatly the number of men who want a share of power, and are willing — or rather do not hope to prevent — that it should be split up into small portions, provided they can secure one portion and nobody else can get any more. That is what is meant by government by a legislature, and by no means justifies an inference as to a whole people.

Again, —

In our day, no fact is more incontestable and conspicuous than the love of democracy for authoritative regulation.¹

We see no proof of that. Our observation is that the average individual very much prefers to be let alone. If he can gain any personal advantage, that is another question. The power to regulate others and the desire to be regulated are very different things, and the great mass as little wish for the last as they expect the first.

A school has arisen among popular working-class leaders which no longer desires that superior skill, or industry, or providence should reap extraordinary rewards. Their ideal is to restrict by the strongest trade-union regulations the amount of work and the amount of produce of work, to introduce the principle of legal compulsion into every branch of industry, to give the trade union an absolute coercive power over its members, to attain a high average, but to permit no superiorities.²

In other words, a combination of individuals seeks to gain advantage for themselves at the expense of the whole community, exactly as was the case with the trade guilds of the Middle Ages. Mr. Lecky himself says : —

The industrial organization to which they aspire approaches far more nearly to that of the Middle Ages or of the Tudors than to the ideal of Jefferson and Cobden.³

Improved methods of government got rid of the first evil. That similar ones have again arisen does not prove

¹ *Ibid.*, p. 213.

² *Ibid.*

³ *Ibid.*

the perversity of democracy, but that in the midst of the tide, which has almost suddenly arisen and seems likely to overflow the world, it has not worked out methods of government strong enough to protect the many from the attacks of the comparatively few. We would not be understood wholly to condemn trade unions. They have undoubtedly secured many and reasonable advantages for their members, but they have also caused a vast amount of suffering and have inflicted damage upon other sections of society. Stronger government in the interest of the whole people, with 'Thus far and no farther' is the only apparent remedy.

Democracy seems to be held responsible also for increase in local expenditure.

But one of the most marked tendencies of our time is the enlargement of the area of state functions and the amount of state expenditure. The immense increase of local taxation, and especially local debt, that has taken place within a very few years has long excited the alarm of the most serious politicians in England. The complications of local taxation are so great that it is probably not possible to obtain complete accuracy on this subject, but there can be no question of the appalling rapidity with which the movement has advanced.¹

We have seen how highly Mr. Lecky rates the practice, that in English national finance the whole initiative both of revenue and expenditure rests with the ministry, and the danger that would arise if any member of the House of Commons could propose money grants. Now Great Britain is — with perhaps the exception of Germany in practice if not in form — the only parliamentary government in the world where such a restriction of financial initiative prevails. Nor does it prevail in English local government. The expenditure of the latter is indeed in some measure under the control of the Local Government Board — a very different institution from the chancellor

¹ Lecky, *op. cit.*, p. 251.

of the exchequer, — but nowhere in the United States, from Congress down through the States to the cities, is there the slightest check to financial proposals by individual members of the legislature ; and what is still worse, the committees which consider proposals for expenditure are entirely separate from those which provide the means of meeting expenditure by taxation. It is quite natural, therefore, that while the English national finances are still in sound and conservative condition, all others in the world are going more or less to the bad. Mr. Lecky illustrates this when he says : —

In 1892 it was stated that in the preceding fifteen years the national debt had fallen from £768,945,757 to £689,944,026, but that during the same period the municipal debt had risen from £92,820,100 to £198,671,312. There seems no sign of this tendency having spent its force, and schemes involving vast increases of municipal expenditure are manifestly in the air. It is at this time that the policy of separating the payment of taxes from the voting of taxes is most largely adopted.¹

Why should he charge to democracy that which he himself shows to be the result of defects of government procedure? Whether these defects are necessary results of democracy we shall have to consider by and by. The same criticism applies to local government in general.

The influences that have begun to dominate at elections neither attract nor favor the best men. Such men will not readily consent to be mere delegates or puppets of a caucus, and they are not likely to be skilful in conciliating by vague promises groups of impracticable theorists and in employing the language of class bribery. The withdrawal of nearly all forms of local government from magistrates and from nominated bodies and the great multiplicity of elected and democratic bodies tend in the same direction.²

That the present system of local government in England is an enormous improvement upon what preceded it seems to be beyond question, as even Mr. Lecky is half

¹ *Ibid.*, p. 252.

² p. 197.

reluctantly compelled to admit, but there are still defects of organization amply sufficient to account for any failure. Mr. Lecky is eloquent upon the evils of government by a single chamber, and we have argued that the first necessity of popular government is strong and responsible executive power, the possession of which in large measure by the British national government makes it the first in the world. Now the Municipal Act of 1885, the principle of which is now extended to London, intrusts government to a single chamber with no separate executive power at all. We believe that this difference between the national and local governments has by no means reached its final demonstration.

Take another count in the indictment : —

The two things that men in middle age have seen most discredited among their contemporaries are probably free contract and free trade. The great majority of the democracies of the world are frankly protectionist, and even in free-trade countries the multiplication of laws regulating, restricting, and interfering with industry in all its departments is one of the most marked characteristics of our time.¹

There is but one country in the world which has steadily adhered for half a century to the principle of free trade, even to the extent of opening the ports of its colonies as freely to ships of other nations as to its own ; which, while all other countries are floundering in the ever-tightening meshes of protection, shows no sign of faltering or change ; and which, whatever may be the merits of free trade or protection, has at least reaped the benefit of a stable policy. That country is Great Britain. There is but one country, and the same, in which all fiscal proposals emanate from one official, the chancellor of the exchequer, responsible in effect, even though indirectly, to the whole nation. Without his initiative no departure from the principle of free trade can be even considered, and no

¹ Lecky, *op. cit.*, p. 213.

incumbent has ever been found ready to incur that responsibility. In every other parliamentary country — always excepting Germany, where private interests rule in a different way — financial proposals are open to any member of the legislature and are largely decided by committees, which have little or no public responsibility, are under secret pressure from private interests, and arrive at results by the process of lobbying and log-rolling which has been described. Is it democracy or government which is here in fault?

Although Mr. Lecky nowhere expressly sets forth the danger from the absorption of the whole power of government by a legislature, he furnishes indications of it at almost every step.

Nothing, indeed, is more remarkable in our constitutional history than the small stress which has been placed in England upon mere legislative machinery, upon constitutional laws definitely tracing the respective limits and powers of different institutions. The system of checks and counter-checks, which it has been the object of written constitutions to maintain, has been roughly maintained in England by the great diversities that long existed in the constituencies; by the powerful organizations of many distinct, and sometimes conflicting, interests; by the great influence and essentially representative character of the House of Lords. Many of the most important working elements in the constitution — the nature of the Cabinet, the functions of the Prime Minister, the dignity and the attitude of the Speaker, the initiative of the government in matters of finance, the extent to which the House of Lords may use its veto — rest essentially on the foundation of custom. As long as a genuine spirit of compromise in harmony with the general spirit of the constitution prevails in Parliament and governs the constituencies, so long the British constitution will prove a success. If this spirit is no longer found among rulers and parliaments and constituencies, there is no constitution which may be more easily dislocated, and which provides less means of checking excesses of bad government.¹

Compare this with the remark of M. Dupriez,² that the balance of power in government does not depend upon

¹ *Ibid.*, p. 114.

² *Ante*, Chap. XXVII.

written constitutions, but upon a struggle between the different branches, and then with the following :—

I do not think there is any single fact which is more evident to impartial observers than the declining efficiency and the lowered character of parliamentary government. The evil is certainly not restricted to England. All over Europe, and it may be added in a great measure in the United States, complaints of the same kind may be heard. A growing distrust and contempt for representative bodies has been one of the most characteristic features of the closing years of the nineteenth century. . . . In England, no one can be insensible to the change in the tone of the House of Commons within the memory of living men. The old understandings and traditions, on which its deliberations have been for many generations successfully conducted, have largely disappeared, and new and stringent regulations have been found necessary. Scenes of coarse and brutal insult, of deliberate obstruction, of unrestrained violence, culminating on one occasion in actual blows, have been displayed within its walls to which there have been few parallels in other legislatures. . . .¹ On the other hand, the power of arbitrarily closing debates, which has been placed in the hands of majorities, has been grossly abused. It has been made use of not merely to abridge but to prevent discussion on matters of momentous importance. . . . And while this change has been passing over the spirit of the House of Commons, its powers and its pretensions are constantly extending. The enormous extension of the practice of questioning ministers has immensely increased the intervention of the House in the most delicate function of the executive. At the same time, the claim is more and more loudly put forward that it should be treated as if it were the sole power in the state. The veto of the sovereign has long since fallen into abeyance. Her constitutional right of dissolving Parliament if she believes that a minister or a majority do not truly represent the feelings of the nation, and are acting contrary to its interests, might sometimes be of the utmost value, but it is never likely to be put in force, while every interference of the House of Lords with the proposed legislation of the Commons has been, during a considerable part of the last few years, made the signal of insolent abuse. . . . In England, the min-

¹ February, 1771, Colonel Onslow brought charges against two printers. "Probably for the first time in English parliamentary history the forms of the House were employed for the purpose of systematic obstruction. By repeated amendments and adjournments the debate was protracted till past four in the morning, and the House was compelled to divide twenty-three times." ("History of England in the Eighteenth Century," Vol. III., p. 299.) It seems that obstruction is not a modern invention.

istry is the creature of the House of Commons, but the organized force of a united cabinet is the most powerful restraint upon its proceedings. Most of the old power of the sovereign, as it has been truly said, has now passed to the Cabinet, and a solid body of the leaders of the majority, whose guidance is indispensable to the ascendancy of their party, is able to exercise a strong controlling influence on all parliamentary proceedings. But the situation is much modified when parliaments break up into small groups. All over the world this has been one of the most marked and significant tendencies of democratic parliaments, and it will probably eventually lead to a profound change in the system of parliamentary government. . . . All the signs of the times point to the probability in England, as elsewhere, of many ministries resting on precarious majorities, formed out of independent or heterogeneous groups. There are few conditions less favorable to the healthy working of parliamentary institutions, or in which the danger of an uncontrolled House of Commons is more evident. One consequence of this disintegration of Parliament is a greatly increased probability that policies which the nation does not really wish for may be carried into effect. The process which the Americans call 'log-rolling' becomes very easy. One minority will agree to support the objects of another minority, on condition of receiving in return a similar assistance, and a number of small minorities aiming at different objects, no one of which is really desired by the majority of the nation, may attain their several ends by forming themselves into a political syndicate and mutually coöperating.¹

It is a saying of the great German historian, Sybel, "that the realization of universal suffrage in its consequences has always been the beginning of the end of all parliamentarism." I believe that a large majority of the most serious and dispassionate observers of the political world are coming steadily to the same conclusion.²

And this great German historian generalizes in this sweeping way about an institution which has never existed in the world till after the first quarter of this century.

Of all the forms of government that are possible among mankind, I do not know any which is likely to be worse than the government of a single omnipotent democratic chamber. It is at least as susceptible as an individual despot to the temptations that grow out of the possession of an uncontrolled power, and it is likely to act with much less sense of responsibility and much less real deliberation. The

¹ "Democracy and Liberty," pp. 118, 119, 120, 124, 126, 241.

² p. 27.

necessity of making a great decision seldom fails to weigh heavily on a single despot, but when the responsibility is divided among a large assembly it is greatly attenuated. Every considerable assembly also, as it has been truly said, has at times something of the character of a mob,¹

a statement which is just as true of a legislature even if divided into two chambers.

The confusion becomes still greater when parliaments divide into a number of small, independent groups, each of them subordinating general political interests to the furtherance of some particular interests and opinions, and when the art of parliamentary government consists mainly of skill in combining these heterogeneous fractions in a single division. The first condition of good legislation on any particular question, as of most other good work, is that it should be single-minded—that it should represent the application of the best available faculty to a special purpose. There is scarcely a contested question determined in Parliament in which motives wholly different from the ostensible ones, and wholly unconnected with the immediate issue, do not influence many votes.²

The experience of the past abundantly corroborates the views of those who dread government by a single chamber. In the English Commonwealth such a system for a short time existed, but the abolition of the House of Lords was soon followed by the expulsion of the Commons, and when Cromwell resolved to restore some measure of parliamentary government, he clearly saw that two chambers were indispensable, and he revived on another basis the House of Lords.³

We have argued that the result came from the abolition not of the House of Lords but of the executive power, the abolition of the House of Lords being only one of the effects of that.

In America, Franklin had strongly advocated a single chamber, and in the American Confederation, which was formally adopted by the thirteen States in 1781, and which represented the United States in the first years of their independent existence, the Congress consisted of only one branch. It was invested with very small powers, and was almost as completely overshadowed by the State rights of its constituents as the Cromwellian House of Commons had been by the military power of the Commonwealth. But the very first article of the American Constitution, which was framed in 1787, divided the

¹ Lecky, *op. cit.*, p. 299.

² p. 300.

³ p. 301.

Congress into a Senate and a House of Representatives. In all the separate States the bicameral system exists, and it also exists in all the British colonies which have self-governing powers.¹

We again maintain that the improvement, if in part, was not mainly in the establishment of two chambers, but in the creation of a strong executive power and the extension of the power of the federal government in some particulars directly over the population of the States.

In France, Turgot and Siéyès advocated a single chamber, and in the French constitution of 1791 all power was placed in the hands of such a body, the result being one of the most appalling tyrannies in the history of mankind. In 1848 the same experiment was once more tried, and it once more conducted France through anarchy to despotism.²

Does anybody suppose that if the French in either case had established two chambers the result would have been any different? While agreeing with Mr. Lecky as to the desirableness, at least outside of cities, of two chambers, our contention is that in the cases quoted, as in the France, the Italy, and the United States of to-day, the real trouble is in the suppression of executive power and the usurpation of all government by the legislature.

The tyranny of majorities is, of all forms of tyranny, that which, in the conditions of modern life, is most to be feared, and against which it should be the chief object of a wise statesman to provide.³

It is precisely this tyranny which we hold to be an inevitable result of the despotism of a legislature; maintaining, further, that the real protection against it in England is, first, in the power and traditions of the Speaker, and second, and including the other, in the power of the executive ministry, holding the practical initiative of legislation; that the second chambers in France, Italy, and the United States afford but a slight and inefficient protection; that the impending danger in

¹ *Ibid.*

² p. 302.

³ p. 312.

England, so far as it exists, is in the increasing power of the House of Commons and the declining power of the ministry over it; and that the single executive head of the United States, elected by the people separately from and independent of the legislature, offers the best means of solving the problem which has yet been seen in the world.

Regarding, therefore, the trouble as being with the legislature, Mr. Lecky seeks for remedies wholly in the modification of that body by property qualifications of voters, plural voting, proportionate representation, the referendum, etc., which have already been discussed. Notwithstanding his objections to the referendum, he is inclined to favor it for this purpose.

Another objection is, that the referendum would have the effect of lowering the authority of the House of Commons, which is now, in effect, the supreme legislative authority in the empire. This is undoubtedly true, and in my own judgment it would be one of its greatest merits. . . . If the House of Commons moves during the next quarter of a century as rapidly on the path of discredit as it has done during the quarter of a century that has passed, it is not likely that many voices would be found to echo this objection.¹

Of the possibility of strengthening the executive and putting it in closer communication with the country there is no suggestion. There are, however, two slight modifications of executive power referred to, which are alluded to here for the sake of future reference; first,

That the cabinet ministers should have the right of opposing or defending measures in both houses, though their right of voting should be restricted to the House to which they belong.²

The other is,

That a government should not consider itself bound either to resign or dissolve on account of an adverse division, due, perhaps, to a chance or factious combination of irreconcilable minorities, but should retain office until a formal vote of want of confidence indicates clearly the desire of the House of Commons.³

¹ *Op. cit.*, p. 241.

² p. 387.

³ p. 247.

Mr. Lecky decides against this for reasons which turn upon the fact, that the vote of want of confidence would still rest with the House of Commons. If the ministry, regardless of the House, could remain in office till at moderate intervals they received a direct vote of approval or disapproval from the country as a whole, the case would be very different, and the hypothesis opens a wide field of speculation, which we shall presently enter upon.

Perhaps the most striking part of Mr. Lecky's book is his strong conviction of an impending and inevitable change.

When the present evils infecting our parliamentary system have grown still graver; when a democratic house, more and more broken up into small groups, more and more governed by sectional or interested motives, shall have shown itself evidently incompetent to conduct the business of the country with honor, efficiency, and safety; when public opinion has learned more fully the enormous danger to national prosperity as well as individual happiness of dissociating power from property and giving the many an unlimited right of confiscating by taxation the possessions of the few, — some great reconstruction of government is sure to be demanded. Fifty, or even twenty-five years hence, the current of political opinion in England may be as different from that of our own day as contemporary political tendencies are different from those in the generation of our fathers. Experience and arguments that are now dismissed may then revive, and play no small part in the politics of the future.¹

After all due weight has been given to the possible remedies that have been considered, it still seems to me that the parliamentary system, when it rests on manhood suffrage, or something closely approaching to manhood suffrage, is extremely unlikely to be permanent. This was evidently the opinion of Tocqueville, who was strongly persuaded that the natural result of democracy was a highly concentrated, enervating, but mild despotism. It is the opinion of many of the most eminent contemporary thinkers in France and Germany, and it is, I think, steadily growing in England. This does not mean that parliaments will cease, or that a wide suffrage will be abolished. It means that parliaments, if constructed on this type, cannot permanently remain the supreme power among the nations of the world. Sooner or later they will sink by their own vices and inefficiencies into a lower plane. They will lose the power of making and un-

¹ *Ibid.*, p. 228.

making ministries, and it will be found absolutely necessary to establish some strong executive independently of their fluctuations. Very probably this executive may be established, as in America and under the French Empire, upon a broad basis of an independent suffrage. Very possibly upper chambers, constituted upon some sagacious plan, will again play a great restraining and directing part in the government of the world. Few persons who have watched the changes that have passed over our own House of Commons within the last few years will either believe or wish that in fifty years' time it can exercise the power it now does. It is only too probable that some great catastrophe or the stress of a great war may accelerate the change.¹

It is to be hoped that the government foreshadowed by Tocqueville may be mild, and we may regard with equanimity its being highly concentrated, but why is it necessary that it should be enervating or a despotism? As an illustration of German thought we may refer to the quotation from Gneist on the English constitution given above.²

To place the chief power in the most ignorant classes is to place it in the hands of those who naturally care least for political liberty, and who are most likely to follow with an absolute devotion some strong leader.³

Where is the proof that the most numerous classes naturally care least for political liberty? May it not be more correct to state simply that they have as yet less comprehension of it? And why should absolute devotion to a strong leader be assumed to be the converse of political liberty? If that leader is selected and controlled with a view to political liberty, may he not be the most efficient means of securing it; as indeed such leaders were during the Middle Ages the best means which Europe had then discovered?

The sentiment of nationality penetrates very deeply into all classes; but in all countries and ages it is the upper and middle classes who

¹ Lecky, *op. cit.*, p. 248.

² *Ante*, Chap. VI.

³ Lecky, *op. cit.*, p. 214.

have chiefly valued constitutional liberty, and those classes it is the work of democracy to dethrone.¹

A more clear exposition of this sentence would be that the upper and the middle classes have chiefly valued their own constitutional liberty, and that democracy is merely striving to get a fair share of it; and why should not the sentiment of constitutional liberty penetrate as deeply as that of nationality if it only had a chance?

At the same time democracy does much to weaken among the upper and middle classes also the love of liberty. The instability and insecurity of democratic politics; the spectacle of dishonest and predatory adventurers climbing by popular suffrage into positions of great power in the state; the alarm which attacks on property seldom fail to produce among those who have something to lose, may easily scare to the side of despotism large classes who, under other circumstances, would have been steady supporters of liberty. A despotism which secures order, property, and industry, which leaves the liberty of religion and of private life unimpaired, and which enables quiet and industrious men to pass through life untroubled and unmolested, will always appear to many very preferable to a democratic republic which is constantly menacing, disturbing, or plundering them. It would be a great mistake to suppose that the French despotic Empire after 1852 rested on bayonets alone. It rested partly on the genuine consent of those large agricultural classes, who cared greatly for material prosperity and very little for constitutional liberty, and partly on the panic produced among the middle classes by the socialist preaching of 1848.²

We hold that it rested upon the unanimous consent of seven-eighths of the whole population of the country, that the most pressing need was for the preservation of order and security as against unbridled anarchy, while no portion of the country had for three hundred years had the slightest opportunity of knowing what was meant by the words 'constitutional liberty.'

Assuming our conclusion, that government by a legislature exclusively is under any circumstances impossible

¹ *Ibid.*, p. 215.

² p. 215.

in the long run, we agree with Mr. Lecky that with the application of universal suffrage it is becoming manifestly more so. We agree also that the tendency is increasing throughout the civilized world towards democracy and universal suffrage, holding that, where the latter has once been established, no property qualification can ever again be imposed unless by violent methods, that is, the employment of armed force. Rejecting the idea that any improvement, in more than a very slight degree, can be obtained through raising the quality of legislative bodies by different methods of election and organization, we agree that recourse is necessary and inevitable to a reconstitution of executive power in which, besides, the element of safety is alone to be found.

If the escape from endless revolution and anarchy is to be sought in strong executive power, there are but two alternatives open to our choice: either a single and absolute ruler, supported primarily by bayonets, and behind them by unresisting national acquiescence, accepted as the least of a multitude of evils, and open to change only by conspiracy and violent revolution; or, on the other hand, individual rulers, over greater or less areas, frankly intrusted with the full power of government, and, dispensing with bayonets, as frankly resting in the exercise of that power upon the support of public opinion; such rulers to be held in check by watchful legislatures, equally resting upon the support of public opinion, and which, having no power of interference with the government, shall have every opportunity of public inquiry and criticism with an absolute veto upon all measures placed before them by the executive, including all questions both of revenue and expenditure. If these two branches, having equal opportunities of placing their respective claims, pretensions, and justification in the clearest and simplest form before the great tribunal of public opinion, shall then recur

at moderate intervals to that tribunal for approval or disapproval as a whole, we shall then have a test of universal suffrage of which, at least, so much may be said that it is very different from anything which has ever yet been tried.

Mr. Lecky points out that a beginning has already been made.

The system has, accordingly, grown up in America of investing the mayors of the towns with an almost autocratic authority, and making them responsible for the good government of the city. In the words of one of the most recent American political writers: "The tendency is visibly strengthening in the United States to concentrate administrative powers in the hands of one man, and to hold him responsible for its wise and honest use. Diffusion of responsibility through a crowd of legislators has proved to be a deceptive method of securing the public welfare." (Gilman, "Socialism and the American Spirit," p. 82.)

It seems to me probable that this system will ultimately, and after many costly and disastrous experiments, spread widely wherever unqualified democracy prevails. In the election of a very conspicuous person, who is invested with very great prerogatives, public interest is fully aroused, and a wave of opinion arises which in some degree overflows the lines of strict caucus politics.¹

Thus far, however, the movement has only taken the form—and that in cities alone—of granting increased power to the executive. Of the other and, if possible, even more important part, that of enforcing public responsibility through a criticising legislative body, no sign is yet visible. It is this problem, one of the most momentous which the world has ever yet had to face, that we have to take into consideration.

¹ *Op. cit.*, pp. 86, 87.

CHAPTER XXIX

THE LESSON OF COLONIZATION

IN studying the effect of race, circumstance, and government upon the history of nations, light may be derived from their colonial experience. We may, therefore, give a few moments to the consideration of that subject. After the break-up of the Roman Empire the very idea of a colony is not heard of again until the great outburst of maritime enterprise in the sixteenth century. Spain and Portugal led the way, followed by Holland, England, and France. The long and bitter struggle for territorial aggrandizement beyond the seas went on with various vicissitudes until at the close of the eighteenth century the relation of the foreign possessions of the several states of Europe stood pretty much as it does now. Out of her once mighty empire Portugal retained only a few petty settlements in India, and in Brazil which has since become independent, and an indeterminate authority over long strips on both coasts of Africa. Spain has lost Southern and Central America within the present century; while of her remaining possessions, Cuba and Porto Rico in the West Indies and the Philippine and Caroline groups of islands in the eastern seas, the two most important, have even now slipped from her grasp. Holland, having been deprived by England of Ceylon and the Cape of Good Hope, still draws a rich tribute from Java and the adjoining Spice Islands. France, which entered last upon the struggle, has suffered most severely of all, as the result of the fortune of war with England. At one time it seemed as if a half of

North America and perhaps all India would become French. The acquisition of Algeria dates from 1830, and within the last twenty years France has again pushed forward in Tunis, Tonquin, and Madagascar. Italy has no foreign possessions except the port of Massowah and some small territory on the African shore of the Red Sea, and those which Germany has acquired with so much eagerness in Africa and in New Guinea and the adjoining islands must be regarded rather as possible outlets for trade than as true colonies.¹

Comparing this view with the tremendous history and expansion of English colonization the question forces itself to the front, What is the reason of all this? The term 'Anglo-Saxon race' is wholly inadequate to account for it. Why should the other Teutonic races, Danes, Norwegians, Dutch, and Germans, have achieved relatively so little? There is another and amply sufficient explanation in difference of circumstances and government. We will attempt a comparison of these.

The modern history of Portugal may be said to begin with Henry of Burgundy, who married the daughter of Alfonso VI. of Castile and received the county of Portugal as a dependent fief. For 440 years a bold and vigorous race of kings ruled the country. Henry's son, Alfonso I., made Portugal an independent kingdom (1148). His immediate successors were engaged in incessant wars against the Moslem and in severe struggles against the clergy and nobles who were always ready to combine against the sovereign, but upon the whole they maintained the dignity of the kingdom and were distinguished as the promoters and champions of the maritime glory of Portugal.² Alfonso II. (1211-1248) summoned the first Portuguese Cortes.

¹ *Chambers's Encyclopædia*, article "Colony."

² *Ibid.*, article "Portugal."

The reign of Alfonso III. (1248-1279) threatened to be a period of civil war and dissension, or at least of complete submission to the Church and the feudal nobility; but on the contrary it was from a constitutional point of view the most important of all the early reigns, and also that in which Portugal concluded its warfare with the Mohammedans and attained to its European limits.

He then turned his attention to his own position in Portugal, and determined to bridle the power of the bishops. Perceiving that this could only be done with the help of the mass of the people, he summoned a Cortes at Leiria in 1254, to which representatives of the cities were elected and sat with the nobles and higher clergy. With the help of this Cortes,—one of great importance in the constitutional history of Portugal,—he dared to resist the papal interdict laid upon the kingdom for having married again whilst his first wife was alive.

Is there not a strong reminder of Henry VIII. of England?

On the other hand, the people made use of their power, and, in a full Cortes at Coimbra in 1261, the representatives of the cities boldly denounced Alfonso's tampering with the coinage, and compelled recognition of the fact that taxes were not levied by the inherent right of the king, but by the free consent of the people.¹

Next followed his son, Diniz (1279-1325).

The period of war and of territorial extension in the Peninsula was now over and the period of civilization was to dawn. Territorially and constitutionally Portugal was now an established kingdom; it remained for her to become civilized and thoroughly homogeneous before the great heroic period of exploration and Asiatic conquests should begin. No better man for such work than the new king, Dom Diniz, could have been found. He was himself a poet and loved letters; he was a great administrator and loved justice; above all, he saw the need of agriculture and the arts of peace to take the place of incessant wars, and nobly earned the title of the "Ré Lavrador, or Dennis the Laborer."²

¹ *Encyclopædia Britannica*, article "Portugal."

² *Ibid.*

Of Pedro I. (1357–1367) it is said : —

The spirit of stern, revengeful justice, which had marked the commencement of his reign, continued to show itself in all matters of administration : he punished priest and noble with equal severity, and the people gave him the title of "Pedro the Severe."

Of John I. (1385–1433) : —

His internal government was not so happy, for though personally a clever administrator he had had, in order to maintain himself when he claimed the crown, to grant vast privileges and estates to the nobles, who became more and more powerful, and, by the exercise of full feudal rights, almost independent.¹

Then came the struggle for power which was taking place nearly at the same time over almost the whole of Europe. When Edward ascended the throne (1483–1488), —

he summoned a full Cortes at Evora and secured the passing of the 'Lei Mental,' or the provision which was supposed to be in the mind of King John when he gave his extensive grants to the nobility; namely, that they would only descend in the direct male line, and on failure should revert to the Crown. By this means, Edward hoped to check the excessive power of the nobles, many of whom fled to Castile.²

It was in this and the beginning of the next reign that flourished the famous Prince Henry the Navigator (1394–1460).

John II. (1481–1495) was a typical king of this period, and followed the example of Louis XI. in France and Henry VII. in England in breaking the power of the nobles with the hearty acquiescence of the people. The first act of his own reign was to summon a full Cortes at Evora, at which it was decreed that the royal corregidores should have full right to administer justice in all the feudal dominions of the nobility.³

In the conflict which followed, the king stabbed his brother-in-law with his own hand and afterwards executed

¹ *Ibid.*

² *Ibid.*

³ *Ibid.*

some eighty of the leading nobles, breaking the power of the feudal class forever.

This terrible struggle over, he occupied himself with such success in administration that he won the name of "The Perfect King."¹

Thus far the history shows a vigor of national development, with germs of free institutions, almost, if not quite, equal to those of England, with a corresponding effect upon colonial enterprise. Subsequent similar domestic circumstances might also have secured corresponding results.

The reign of Emmanuel (1495-1521) is the heroic period of Portuguese history. In 1497 Vasco da Gama passed the Cape of Good Hope, — though it had been discovered by Diaz in 1486, — crossed the Indian Ocean, and reached Calicut. In 1500 Cabral discovered Brazil. In 1501 Amerigo Vespucci discovered the Rio Plata and Paraguay. In 1509 Lopez occupied Malacca. In 1510 Albuquerque occupied Goa. In 1515 Soarez built a fort in the island of Ceylon. In 1517 Andrada established himself in Canton, and made his way to Peking in 1521, while in 1520 Magellan, a Portuguese sailor, though in the Spanish service, passed through the straits which bear his name. In 1505 Francisco de Almeida was appointed viceroy of India, and was succeeded in 1507 by Albuquerque, equal probably at once as an explorer, an administrator, and a ruler to any of the men who have shed such glory on the English name.

Yet he did not escape the envy of courtiers and the suspicions of his king, who appointed Soarez, a personal enemy of Albuquerque, to supersede him as viceroy. This news reached him just as he was leaving Ormuz, and gave a severe shock to his shattered health. A few days after he died at sea near Goa, December 16, 1515.²

How close is the parallel with the fate of Lally and Dupleix in France, and how different from that of Clive

¹ *Encyclopædia Britannica*, article "Portugal."

² *Chambers's Encyclopædia*, article "Albuquerque."

and even Warren Hastings in England. Mark now the turn of the wheel.

The reign of John III., who succeeded Emmanuel in 1533, is one of rapid decline. The destruction of the feudal power of the nobility by John II. had not been an unmixed good; it had fatally weakened the class of leaders of the people; the nobility lost all sense of patriotism and intrigued for *moradias*, or court posts, and, in short, their position was much the same as that of the French nobility before the Revolution of 1789. The overthrow of their power had also made the king absolute; having now no feudal nobility to combat, he had no need of the support of the people, and the newly created Indian trade brought him an income greater than that of any prince in Europe, so that he had no need of taxes. There was, however, a more serious cause of the declining power of Portugal than the absolutism of the government, and that was the rapid depopulation of the country. Alentejo and Algarves had never been thoroughly peopled: the devastation produced by constant wars could not be easily repaired; and, though the exertions of Diniz the Laborer had made Beira the garden of Europe, the southern part of the kingdom was chiefly in the hands of the military orders, who did not sufficiently encourage immigration. The great discovery of the fifteenth century quickened the depopulation of Portugal. Not only did the bulk of the young men gladly volunteer as soldiers and sailors to go in search of wealth and honor, but whole families emigrated to Madeira and the Brazils. The king, the nobles, and the military orders were quite unconcerned at this extensive emigration, for their large estates were cultivated much more cheaply by African slaves, who were imported from the time of the first voyages of Dom Henry in such numbers that Algarves was entirely cultivated by them, and even in Lisbon itself they outnumbered the freemen by the middle of the sixteenth century. While the Portuguese nation was exhibiting these signs of a rapid decline, another factor was added by the religious zeal of John III. The king inherited his father's bigotry and fanaticism, and was anxious to introduce the Jesuits and the Inquisition into Portugal. The Church of Rome was not likely to hinder his pious desire, but for several years the "neo-Christians" — the name given to the half-hearted converts made from the Jews as the condition of their remaining in Portugal — managed to ward off the blow. The king's earnest wish was, however, gratified at last, and in 1536 the tribunal of the Holy Office was established in Portugal with the bishop of Ceuta as first grand inquisitor, who was soon succeeded by the king's brother, the Cardinal Henry. The Inquisition quickly destroyed all that was left of the old Portuguese spirit and so effectually stamped out the Portuguese revival of literature that, while towards the close of the six-

teenth century all Europe was becoming civilized under the influence of the Renaissance, Portugal fell back, and her literature became dumb.¹

Taking these combined causes, is it any wonder that her settlements beyond sea went so rapidly to destruction?

The colonial history of Spain, even more than that of Portugal, is illustrative of her own history and government. We may take her modern history as starting from the West- or Visi-Gothic, kingdom, when one of the finest of the races which spread over Europe drove back the barbarous Alans, Suevi, and Vandals, and established themselves for three centuries, 418-711.

Among the most conspicuous features of the West-Gothic kingdom in Spain we may note elective monarchy, — though limited to Gothic blood, — the great and indeed overshadowing power of the Church, an aristocracy which had in its hands a very large part of the administration, a uniform code of laws for all Spaniards, with both a distinctly Roman and ecclesiastical impress on it. The Church on the whole seems to have been the guiding spirit, and the Spanish bishops and clergy were held in high esteem for their learning and virtue. It was they who mainly inspired the legislation of the great national councils of Toledo, which to the West-Goths of Spain were what the Witenagemot was to our Saxon ancestors. . . .

With the conversion of the West-Goths from Arianism to the orthodox faith in the latter part of the sixth century came in new influences and a great accession of power to the ecclesiastics. Recared (586-589) was the first Catholic king of Spain. With the zeal of a convert he set himself to root out Arianism, burning Arian books of theology and frightening his Arian bishops into the profession of the Catholic belief. He seems to have been successful, and richly endowed churches and monasteries grew up in every part of Spain.

Unhappily the seeds of bigotry and religious intolerance had been sown, and with the beginning of the seventh century came a savage persecution of the Jews, multitudes of whom had long been settled in Spain, and had thriven as elsewhere by trade and industry. The Jew up to this time seems to have found in Spain a particularly safe and comfortable home. Now, at the instance of a West-Gothic king, he was so cruelly oppressed and persecuted that even the Catholic clergy interposed to some extent on his behalf. A decree for the

¹ *Encyclopædia Britannica*, article "Portugal."

expulsion of the entire Jewish community was promulgated on one occasion with the sanction of the council of Toledo; but the Jew still held his ground in Spain, and prospered and grew rich, and his presence in the country contributed to the rapid spread of Arab conquest in the next century.¹

The next seven centuries were occupied with the flow and ebb of the tide of Moorish conquest, not a good school for the civic qualities of a nation. But through them all were preserved the germs of those institutions which under different circumstances might have made Spain what England afterwards became. Thus in Castile from 1252 to 1479, —

The religious character of the war had enabled the clergy to retain greater power than they possessed in any other European country, though they had lost that omnipotence which they had enjoyed under the Visigoths. Their councils and synods, which had once formed the sole constitutional machinery of the country, had been superseded by the secular assembly of the Cortes. The early history of the Cortes is wrapped in great obscurity, but its main outlines are fairly discernible. Originally a meeting of the great nobles and royal household, it had attained to the position of a national assembly in 1162, when the deputies of the chief towns were admitted to membership. Its powers and procedure developed gradually, and naturally varied according to the character of the different kings. Its first functions were the approval of general legislation and the granting of extraordinary taxation, though it is difficult to say when its sanction of such measures was regarded as essential. The assembly consisted of the three estates, — clergy, nobles, and citizens, — who deliberated sometimes separately and sometimes together. Representation existed only in the case of the Third Estate, whose members were elected at first by all free citizens, and afterwards by the municipal magistrates. The number of cities which sent deputies varied very much at different times. As to what constituted the right of attendance in the case of the nobles and the clergy there is great obscurity, but it probably depended partly upon tenancy-in-chief and partly upon royal summons.²

Alfonso XI. reigned nearly two centuries later (1312-1350).

¹ *Op. cit.*, article "Spain."

² *Ibid.*

His reign, troubled as it was, constitutes an important epoch in the history of Castilian liberties. In 1328 he issued two laws which formed the firmest basis of the power of the Cortes. He recognized the right of that assembly to be consulted in all important matters of state, and he solemnly pledged himself and his successors not to impose any new tax without its approval and consent. These concessions were to some extent counterbalanced by his restriction of the right of electing deputies to the *regidores*, or magistrates, of each city. The narrowing of the franchise was a great blow to the popular rights, and it gave the Crown facilities for tampering with the elections, which were frequently abused in later days. But at the same time the municipal magistrates enjoyed considerable independence, and for several generations the cities showed no sign of subservience. In fact, Alfonso's position made him dependent upon the support of the citizens against the great lords, so that he was not likely to aim at diminishing the power of the former class.

So Henry III. (1390-1406), —

by throwing himself boldly upon the support of the Third Estate, and by giving them the predominance in the cities, succeeded in taking efficient measures against the nobles. All domain lands which had been alienated during his minority had to be restored, and all confederations among the barons were declared illegal and dissolved.

But the tide turned under John II. (1406-1454).

Before many years had elapsed he had fallen completely under the influence of Alvaro de Luna, grand master of the Order of St. James and constable of Castile. The minister, possessed of all the qualities which would have endowed a great monarch, set himself to increase the royal power. Not only were the nobles depressed to a condition of impotence which they had never yet experienced, but steps were also taken to diminish the powers of the Third Estate. Many of the lesser towns in Castile, as in England at the same period, found that the right of representation involved pecuniary burdens which they were eager to get rid of. This made it easy for the minister to reduce the number of towns sending deputies to the Cortes to some seventeen or eighteen of the largest cities. This diminution of the Third Estate, though not resented, was an insidious blow at its real interests, and made it easy for Charles V. and his successors to reduce the Cortes to impotence.

That is, Alvaro de Luna did just what Richelieu and Mazarin did in France two centuries later, and Strafford

and Laud tried to do in England. It is the failure of the latter attempt which typifies the difference in the modern history of the three countries.

The history of Aragon is even stronger than that of Castile. Under the reign of James the Conqueror (1213-1276) we read:—

But the privileges of the nobles, great as they were, were not the only check upon the royal power. Each province had its own cortes, which possessed from an early date the right of granting taxes and approving legislation. In Valencia and Catalonia the Cortes consisted as in Castile of the ordinary three estates; but in Catalonia, where a maritime life had inspired the inhabitants with a passionate love of freedom, the commons enjoyed a predominance which was hardly to be paralleled in any other country in the Middle Ages. The Cortes of Aragon, which was more important and whose history has been more carefully elucidated, consisted of four estates or arms (*brazos*). Besides the great prelates and the *ricos hombres*, both of whom had the right of appearing by proxy, there was a separate chamber of smaller landowners. This contained the *infanzones*, or lesser tenants-in-chief, and the *caballeros*, or knights, who were tenants of the greater barons, but whose military rank gave them the right of personal attendance. The fourth chamber alone was representative, and consisted of the deputies of the towns. Their presence is first mentioned in 1133, thirty years before anything is heard of popular representation in Castile. Their numbers were naturally small, as the kingdom was of very limited extent, but it seems to have been early established that a town which had once sent deputies was permanently entitled to the privilege, and this preserved them from having their rights tampered with by the Crown, as was done in Castile. Besides their legislative and taxative functions, the Aragonese Cortes was also a supreme court of justice, and in this capacity was presided over by the *justiciar*, an official whose unique powers have attracted the attention of all writers on Spanish history [and suggest, perhaps, a certain analogy at once with the higher English judiciary and the Speaker of the British House of Commons]. In its origin the office had nothing very remarkable about it, and it is only the peculiar circumstances of the kingdom which forced it into such prominence. The *justiciar* was not at first intrusted with any political functions, but the difficulty of adjusting the relations between the king and the barons led to his being called in as mediator. By the fourteenth century he had become almost the supreme arbiter in constitutional questions. To him the people could appeal against any infraction of their liber-

ties, while the king regarded him as his chief councillor and as the most efficient barrier against armed rebellion, which was the only alternative method of settling disputes between his subjects and himself. As the *justiciar* thus became the pivot of the constitution, it was of great importance to secure that he should exercise his functions with firmness and impartiality. As the *ricos hombres* were exempted from corporal punishment he was always chosen from the lesser nobles or knights, and was made responsible to the Cortes under penalty of death. The dignity of the office was enhanced by the character of its successive holders; and the mediæval history of Aragon abounds with instances of their fearless opposition to the Crown, and of their resolute resistance to despotism on the one hand and anarchy on the other.¹

Under Pedro IV. (1291-1327) we read:—

Thus Aragon, following the tendencies of the age, became centralized under a powerful monarchy, and the forces of feudalism received a final check. But Pedro IV. was far from establishing anything like a despotism. While destroying the Privilege of Union he took a solemn oath to respect the political and personal liberties of his subjects, and enjoined the same oath upon his successors. At the same time he strengthened the powers of the *justiciar*, whose preëminence dates from this reign.

And again under Alfonso V. (1416-1458):—

In order to secure the *justiciar* from undue influence upon the part of the Crown, a law was made in 1442, that the office should be held for life and that its occupant could only be dismissed by the king, with the express approval of the Cortes. In 1461 this provision was followed by another law which directed that all complaints against the *justiciar* should be heard before a commission regularly chosen from the four estates.²

The modern history of Spain, that which, apart from the question of race, makes Spaniards so different from Englishmen, may be said to begin with the union of Castile and Aragon under Ferdinand and Isabella (1479-1516):—

The steady extension of the royal power in Spain was due in no small degree, as Machiavelli has pointed out, to the constant succession of enterprises in which the attention of the nobles was absorbed. These enterprises may be summarized under three heads: (1) the

¹ *Op. cit.*

² *Ibid.*

union of the peninsula; (2) the extension of colonial enterprise; and (3) the acquisition of foreign countries.¹

The conquest of the Moors was work precisely fitted to consolidate a despotism by forming the nobles into a war-like class under stern military discipline, and by gradually breaking down the bulwarks of popular liberty through the necessity of yielding to the demands of the moment. Again, that it was a war of Christian against Moslem identified Spain with the Church as it then existed, a position typified by the name which was ever after borne by the king, of his Catholic Majesty. It was in the midst of this war in 1483 that was organized that fruitful source of woe, the Inquisition, under the presidency of Torquemada.

Foreign conquests worked powerfully in the same direction. The poisonous embrace of Italy, which was so fatal to France and Germany, was competed for also by Ferdinand with corresponding results; and when, by the accession of Charles V., Spain became only a fraction of the dominions of the house of Hapsburg, whose rule lasted for two centuries, the broad road was entered upon which led to the reign of Philip II. and his successors.

In the course of this period the monarchy obtained absolute authority, and Spain, after rising to be the foremost power in Europe, sank to the position of a second-rate power from which it has never since emerged.²

The colonial history of course dates from Columbus, the Genoese, who, after solicitations at several of the European courts, secured the patronage of Isabella. It was a royal enterprise, the chief profits accruing to the Crown and of course to the Church. What the Spaniards were in America is illustrated by the careers of Cortés and Pizarro. And yet it may be doubted whether, allowing for the difference of two centuries of change in the world, these men

¹ *Ibid.*

² *Ibid.*

were much worse than Clive and Warren Hastings and those who followed them. The real difference was in the relation to the government at home. Not less striking is the difference in application of the stream of wealth which, though in disproportionate quantity, flowed from India to England and from America to Spain. In the latter country it rendered the Crown independent of its subjects, and enabled it to carry on vast enterprises with entire disregard of their welfare, their liberty, or their support. In England the wealth accruing to individuals, the Crown remained dependent upon, and in great measure subject to, Parliament and public opinion as it then existed.

The Spain of to-day is in entire accordance with this history.

In Spain, to a greater extent than in any other country in Europe, the present is bound up with the past; her greatest misfortune is that the French Revolution, terrible as it was, did not sweep on to Gibraltar. . . . The so-called system of representative government, by which absolute monarchy was supposed to be superseded early in the century, is nothing but an illusion: Spain has to-day no national assembly which can act as a free and real organ of the national will. . . . Recent appeals of ministers to the queen reveal the all-important fact that the supreme powers of the State to-day reside in the Crown and not in the legislature. The administration of affairs is still carried on under the old bureaucratic system by certain notables named by the Crown, who call upon the phantom body known as the Cortes to clothe their acts in the forms of legality. Spain's powerlessness to establish in recent times a genuine national assembly, into which her energies could be concentrated, goes far to explain why she has never been able to emancipate her colonies from the baneful system of paternalism, resting upon the idea that colonists are mere children or slaves to be governed and controlled as such by a bureau at the metropolis. . . . It was thus that France's dream of empire in the West was broken, and she was forced to retire from North America. Under a much lighter pressure Spain was forced to give up all of her vast colonial possessions on the main land, stretching at one time from Paraguay to California. The impulse in favor of entire emancipation which animated the movement at Caraccas in 1810 was consummated by the independence of Mexico in 1829. The motive which prompted this widespread revolt is to be found in the irrational selfishness that

impelled Spain to regard the colonies simply as instruments to be employed solely for what she conceived to be the interests of the metropolis. Her colonial system of repression and restriction as finally settled rested on two corner-stones; the one commercial, the other political. Under the mercantile system, developed in Spain in the sixteenth century and which England copied, it was held that colonists were to be prohibited under heavy penalties from trading except with the mother country; while under the political system, put in force about the same time, the government of the colonies was retained by the Crown at Madrid, and administered in the colonies by an oligarchy of home-bred Spaniards sent out for that express purpose. By the fierce and unbending enforcement of these two selfish and irrational principles Spain has lost all of her colonies in the New World except Cuba and Porto Rico, the first of which is now writhing in the death agony to which she has been reduced by their extreme application.¹

It is significant that the same condition of things exists in the Spanish possessions of the Philippine Islands on the other side of the world. Can any one doubt that government has had quite as much influence as race upon the character of the Spanish people?

The country which, next to England, holds the first rank in colonial history is Holland, or what came to be known as the United Netherlands.

Though deprived by Great Britain, in the eighteenth century, of her possessions in America and Africa, this little people, whose country is but a point on the map of Europe, has ruled for three centuries with an admirable tenacity over this vast colonial empire of Insul-India, which counts thirty-five millions of inhabitants and comprises islands as large as France, islands in the middle of which England would be only an islet lost in a sea of forests. Java, Sumatra, three quarters of Borneo, the Moluccas, the Celebes, Bali, Lombok, Sumbawa, Flores, Timor, — that is what the Dutch still possess of their immense East Indian empire which formerly extended as far as Bengal and to the Cape of Good Hope.

How is it that the Dutch have maintained themselves in the archipelago? How is it that thirty thousand Europeans govern peaceably

¹ Hannis Taylor, the retiring United States minister to Spain, in the *North American Review* for November, 1897.

twenty-five millions of Javanese who are satisfied with their lot? That is the most wonderful thing in Java; that is what it is interesting to examine.¹

We may ask of her history why she accomplished so much and yet did not do more. The races which fought for supremacy over the marshes by the sea were very much the same in character as those which disputed the soil of Britain. Only the strong and hardy could hold their own in such a country and climate. It was in the eleventh century that the "counts of Holland" began to assert their rule and to maintain themselves against both France and Germany.

The reign of William I. (1206-1224) is notable by reason of the civic charters he granted—one to Gertruydenberg in 1213, another celebrated one to Middelburg in Zeeland in 1217. These charters were the models on which later ones were framed; they secured the existing liberties of towns, gave the burghers the right of being ruled by law, and established equal justice within the walls.

Floris V. allied himself closely with the English king and secured great trading advantages for his people. To balance the power of the nobles, which more and more took the form of oppression, he also granted charters to towns—notably to Amsterdam—and forwarded their growth.²

John I., a feeble prince, ended the first line of counts after a rule of nearly four hundred years.

Europe has perhaps never seen an abler series of princes; excepting the last there is not one weak man among them; they were ready fighters, brave crusaders, handsome, well-built persons with high chivalrous gifts tainted with corresponding chivalrous vices; they were all ready to advance the commerce of the country; they were the friends of the people, the supporters of the growing towns; they made their marsh lands fertile and raised Holland to be a companion of kings. . . . During this time Holland became independent of the imperial authority. The development of the country took a municipal form. Before the fourteenth century there were in Holland no estates, nor any general political life. In the thirteenth century,

¹ Jules Leclercq, *Revue des Deux Mondes*, November 1, 1897.

² *Encyclopædia Britannica*, article "Holland."

when any great matter had to be discussed in a city, all citizens were summoned by ring of the great bell to the public square and there decided the question by a democratic vote. . . . In time the vague civic democracy gave place to an oligarchical government. Each of the cities was at first ruled by the count's "schepenen" or judges, supported by councillors, one from each quarter of the town, from whom sprang the title of burgomaster, by which they became known in later days. The "schepenen" administered, while the councillors or burgomasters attended to civil affairs and by degrees threw the judges into the background. Peace and defence were entrusted to a local militia armed with the crossbow.¹

In 1436 Philip the Good of Burgundy established his rule over almost the whole of the Netherlands.

By this incorporation with the house of Burgundy the commercial and artistic life of Holland was quickened, but political liberties suffered; for the rule of the "good duke" was far from being good. From that moment till the latter part of the next century the liberties of the Netherlands were treated with contempt.

Throughout the Burgundian time Holland plays but an insignificant part, and it may merely be remarked that the friendship of the dukes for the nobility did that class more harm than their hostility to civic liberty hurt the towns; for the lavish waste of Philip's court impoverished the nobles and the wars of Charles destroyed them. After their day the Netherlands nobility was never again powerful. The Church also suffered; it was enriched and corrupted by Philip and was consequently very loyal to him; but his favor, instead of strengthening it, made the Reformation necessary. The cities, though oppressed and heavily taxed, grew stronger; and when Duke Charles perished at Nancy they at once stood out for their rights and obliged his sole heir, the Duchess Mary, not unwillingly, to grant them the "Great Privilege" of March, 1477 (the counterpart of the English Magna Charta), which affirmed the power of the cities and provinces to hold diets and reserved to the estates a voice in the declaration of war and authority to approve the choice she might make of a husband. It was declared that natives alone might hold high office; no new taxes should be laid without the approval of the estates; one high court of justice was established for Holland, Zealand, and Friesland; the Dutch language was made official. Thus came to an end the centralizing despotism of the Burgundian dukes. This period is noted also for a reconstruction of the civic government and for the appearance of the States-General first summoned by Philip

¹ *Ibid.*

the Good. In the states of Holland many nobles sat in person though they had but one collective vote. At first all towns larger and smaller also sent representatives, but after a time the smaller ceased to appear, and only such larger cities as Dort, Haarlem, Leyden, Amsterdam, Gouda, were represented, each having one vote. In Zealand and elsewhere clergy, nobles, and cities sat separately, each order having a single vote. The estates under the Burgundians had little power; they could not even control the taxation. The States-General expressed no national feeling or union of the provinces; that was a far later state of things.¹

The advent of Mary's husband, Maximilian of Austria, and his grandson, Charles V., marked the beginning of the desperate struggle for political life and liberty which led to the war with Spain and lasted for more than a century and a half. It secured for the Netherlands one of the great advantages which has made the modern history of England, the expulsion of the rule of the Roman Catholic Church. But the incessant fighting left little room for the development of civil institutions. Hardly was the Spanish war ended by the treaty of Munster in 1648 when the struggle with France began, and Louis XIV., aided by the England of Charles II., entered Amsterdam in 1672. The states had next to support the Dutch king of England, William III., in his conflict with France, which ended with the peace of Utrecht in 1713. All through the eighteenth century the Netherlands were involved in European complications, Marshal Saxe overrunning the Flemish portion in 1745, while with the French Revolution the whole country fell under the power of Napoleon. The peace of 1815 established the royal despotism of which we have elsewhere spoken. Is it not apparent what a difference in forming the character of a people these circumstances must have had from the nearly two hundred years of internal peace in Great Britain?

The summit of power and influence of the Dutch

¹ *Op. cit.*

Netherlands may be placed in the first half of the seventeenth century from the first truce with Spain till some years after the final peace. Trade, science, agriculture, art, and literature reached their fullest development.

The liberty of the press secured at an early date led to the establishment of numerous newspapers, Dutch and foreign. The foreign news-sheets of Holland, mostly published in French, were sent all over the world, as they contained the latest intelligence, and things that were not allowed to appear elsewhere.¹

It was then that nearly all her colonies were established, — New York in 1609; Java, 1610; Tasmania, 1642; Cape of Good Hope, 1652; Ceylon, 1658. It is a coincidence, if not an explanation, that this was a time of strong executive government under men like Maurice of Nassau and his brother Frederick Henry, held in control by the States-General.

In the first constitution of this government after the Revolt from Spain all the power and rights of Prince William of Orange as governor of the provinces seem to have been carefully reserved. But those which remained inherent in the Sovereign were devolved upon the Assembly of the States-General, so as in them remained the power of making peace and war and all foreign alliances, and of raising and coining of monies. . . . Originally the States-General were convoked by the Council of State where the Prince had the greatest influence; nor since that change have the states used to resolve any import matter without his advice. . . . So Prince Henry was used to answer some that would have flattered him into the designs of a more arbitrary power, that he had as much as any wise prince would desire in that State; since he wanted none, indeed, besides that of punishing men and raising money; whereas he had rather the envy of the first should lie upon the forms of government, and he knew the other could never be supported without the consent of the people to that degree which was necessary for so small a State against so mighty Princes as their neighbors.²

The turning-point is clearly visible.

¹ *Chambers's Encyclopædia*, article "Holland."

² Sir William Temple, "Observations on the United Provinces of the Netherlands," London, 1740.

The peace of Utrecht in 1713 marks the close of Holland's activity as a great power in Europe. For her the eighteenth century was the century of demoralization and decay. After William III.'s death she became a republic once more; the stadtholdership was reestablished in 1747, but it made no difference in the downward course.¹

With 1713 the importance of Holland in European politics comes to an end.²

Hear Sir William Temple again.

Upon these foundations was this State first established and by these orders maintained till the death of the last Prince of Orange; when by the great influence of the Province of Holland among the rest, the authority of the princes came to be shared among the several magistracies of the State; those of the cities assumed the last nomination of their several magistrates; the States-Provincial the disposal of all military commands in those troops which their share was to pay; and the States-General the command of the armies by officers of their own appointment, substituted and changed at their will. . . . But the greatest of all causes that concurred to weaken and indeed break the strength of their Land Milice was the alteration which happened by the Perpetual Edict of Holland and West Friesland, upon the death of the last Prince of Orange for exclusion of the power of the stadtholder in their province or at least the separation of it from the charge of captain-general. Since that time the main design and application of those provinces has been to work out by degrees all the old officers both native and foreign who had been formerly sworn to the Prince of Orange and were still thought affectionate to the interest of that family; and to fill the commands of their army with the sons and kinsmen of burgomasters and other officers or deputies in the State whom they esteemed sure to the constitutions of their popular government, and good enough for an age where they saw no appearance of an Enemy at Land to attack them.³

That is to say, in the place of a firm and strong government, acting for the whole state and making it respected at home and abroad under responsibility to an elected assembly, they became a mere confederation of states, each jealous of its separate power and authority and absorbed in its local and private interests, with a disregard

¹ *Chambers's Encyclopædia*.

² *Encyclopædia Britannica*.

³ Temple, *op. cit.*

of those of the whole body, as to which, indeed, they could accomplish but little. It was the same story as with the confederation of our colonies during the war with Great Britain. Small wonder that the Dutch should have been stripped one by one of their colonial possessions.

It may be remarked that the government of Java is in principle the same as that of British India, a system of administration radiating from a despotic governor-general, himself held in check, though to a less extent than the governor of India, by public opinion in the mother country. The civil service is recruited from students who pass a severe course of study and examination at home.

The history of government in France has already been discussed, and we have now only to refer to that of the colonies. Never, perhaps, has there been in the world a sharper contrast of two civilizations brought into contact than that of France and England in North America. In energy and enterprise at the beginning there was but little to choose. The Norman and Breton sailors were as bold and hardy as the English. In 1578 there were a hundred and fifty French fishing vessels at Newfoundland, besides two hundred of other nations, Spanish, Portuguese, and English.¹ The names of La Roche, Champlain, and De Monts for bravery and resource will bear comparison with any English explorers. Twelve years before the Pilgrims landed at Plymouth, Quebec was founded, and only one year after the first permanent English settlement in North America at Jamestown in Virginia. By 1670 the French had penetrated to Detroit and Lake Superior, had discovered the Ohio River and descended the Illinois; and in 1682, La Salle and Tonty—names unsurpassed for courage and high purpose in any history—reached Louisiana by way of the Mississippi and proclaimed Louis

¹ Parkman, *Pioneers of France in the New World*, Chap. II., p. 208.

XIV. sovereign of the Great West. In 1699, the Sieur d'Iberville sailed up the Mississippi and joined hands with Tonty.

The later history of these regions points to what might have been, but the animating spirit was wanting.

"France in the New World" — the attempt of Feudalism, Monarchy, and Rome to master a continent: Feudalism still strong in life, though enveloped and overborne by newborn centralization; Monarchy in the flush of triumphant power; Rome, nerved by disaster, springing with renewed vitality from ashes and corruption, and ranging the earth to reconquer abroad what she had lost at home. New France was all head. Under King, Noble, and Jesuit, the lank, lean body would not thrive. Even commerce wore the sword, decked itself with badges of nobility, aspired to forest seigniories and hordes of savage retainers.

Along the borders of the sea an adverse power was strengthening and widening with slow but steadfast growth, full of blood and muscle, a body without a head. Each had its strength, each its weakness, each its own mode of vigorous life; but the one was fruitful, the other barren; the one instinct with hope, the other darkened with shadows of despair.

By name, local position, and character one of these communities of freedom stands forth as the most conspicuous representative of this antagonism; — Liberty and Absolutism, New England and New France. The one was the offspring of a triumphant government; the other of an oppressed and fugitive people; the one an unflinching champion of the Roman Catholic reaction; the other a vanguard of the Reform.¹

It is impossible to judge with fairness the French colonization in America without taking into account the condition of affairs at home. Ten years before the founding of Quebec, France had closed, by the conversion of Henry IV. to the Romish Church and the compromise of the Edict of Nantes, the religious wars which under the precious children of Catherine dei Medici had led to the massacre of St. Bartholomew. Two years after Quebec was founded, Henry fell under the dagger of an assassin, and the government passed to the feeble minority of Louis

¹ Parkman, *op. cit.*, Introduction.

XIII. and the regency of Maria dei Medici, whose subserviency to her Italian favorites roused the nobles to revolt and plunged the country again into civil war. In 1624, Richelieu began his career of breaking the power first of the nobles and then of the towns and reducing the whole country into subjection to the royal power, the process being emphasized by taking a due share in the miseries of the Thirty Years' War. In 1642, Mazarin and the regent, the Spanish Anne of Austria, took up the work; but, being much less competent for it, plunged the country into the furious civil war known as that of the Fronde. The reign of Louis XIV., beginning nominally in 1653, but in effect in 1661, restored internal peace, but led, if possible, to greater disaster through foreign war. It was just at the time when La Salle and Tonty were declaring Louis XIV. sovereign of the Great West that he was preparing the revocation of the Edict of Nantes, which was to expel from France for the benefit of other countries the most industrious, skilful, and intelligent part of her population. If we consider that almost every impulse in France came from the royal power, that individual initiative and independence of thought were rigorously suppressed, can we be surprised at the course taken by the history of New France? But this was not all. It was the period of that great revival and reaction in the Romish Church which Macaulay has so powerfully depicted. In the middle of the sixteenth century Ignatius Loyola founded the Society of the Jesuits, one of the most mighty organizations which has ever existed, and of which the very name is a synonym for opposition to human liberty of thought and action. What the power of the Jesuits was in France in the seventeenth century is written in every page of history.

The Old World was not wide enough for this strange activity. The Jesuits invaded all the countries which the great maritime discoveries

of the preceding age had laid open to European enterprise. They were to be found in the depths of the Peruvian mines, at the marts of the African slave-caravans, on the shores of the Spice Islands, in the observatories of China. They made converts in regions which neither avarice nor curiosity had tempted their countrymen to enter; and preached and disputed in tongues of which no other native of the West understood a word.¹

Is there any country in which they have acquired any prevailing influence where their presence, even if it may not have been the cause, was not accompanied or followed by disaster and degradation? They must, however, divide with other religious orders the honors of New France. In the company of New France, chartered under Richelieu in 1627, it was provided that,

Every settler must be a Frenchman and a Catholic; and for every new settlement at least three ecclesiastics must be provided. Thus was New France to be forever free from the taint of heresy. The stain of her infancy was to be wiped away. She was to be a land set apart, a sheepfold of the faithful. The Huguenots, the only emigrating class in France, were forbidden to touch her shores, and when at last the *dragonnades* expelled them, they carried their skill and industry to enrich foreign countries and the British colonies in America. There is nothing improbable in the supposition that, had New France been thrown open to Huguenot emigration, Canada would never have been a British province, that the field of Anglo-American settlement would have been greatly narrowed, and that large portions of the United States would at this day have been occupied by a vigorous and expansive French population.²

We will now pass to the other side of the world. The English and French East India companies were almost contemporaneous in origin, the former having been chartered by Elizabeth in 1600, that of France by Henry IV. in 1604. For more than a century it was a question of more or less numerous trading-posts in the Eastern seas. The struggle for supremacy began in 1745. The names of Duplex, Bussy, Labourdonnais, and Lally-Tollendal will

¹ Macaulay, "Essay on Ranke's History of the Popes."

² Parkman, *op. cit.*, Chap. XV., p. 399.

bear comparison with any in New France, and fall behind their English competitors only in the important element of success. The first of these was the son of a rich farmer general and made his first voyage in a trading vessel of St. Malo. In 1720 through the influence of his father, who was a director in the East India Company, he was sent as a member of the superior council to Pondicherry. In 1742 he had become governor-general of the French possessions in Hindostan and set himself to secure the whole peninsula for France. The Mogul Empire of Baber was falling to pieces and the only question was whether the inheritance should accrue to the warlike native race of the Mahrattas or to one of the foreign invaders. Aided by his wife, Jeanne de Castro, a descendant of the early Portuguese adventurers, who was familiar with all the Indian dialects and acted as his diplomatic secretary, Dupleix was forming alliances with the native rajahs and princes, being vigorously supported by his lieutenant Bussy, when the English became jealous of his influence, and war breaking out at home in 1746 brought the question to a crisis.

Unfortunately the company did not show itself greatly disposed to second him in his vast projects; he even received an order to stop the work of fortifying Pondicherry and was obliged to continue it at his own expense, under pain of leaving defenceless the most important of the French possessions in the country.¹

The company in the interest of commerce entered into an agreement of neutrality and sent orders to that effect to Labourdonnais, who was governor of the isles of France and Bourbon. The plan of this latter was more simple than that of Dupleix. It consisted in destroying the English commerce by force of arms without any purpose of territorial aggrandizement. Working together they might

¹ Larousse, *Encyclopédie Universel*.

have held their own against the English. Disagreement was fatal to both.

Colbert would have employed these two great but incomplete spirits, both separately for the greatness of their country. The ministers of Madame de Pompadour knew no better than to oppose them and afterwards to sacrifice them to one another.¹

This is not the place to follow the steps by which the French were deprived of their priority of occupation and the rule of India passed to England. Whatever may be said of difference of race, an ample explanation of these changes may be found in the condition of the governments at home. A centralized bureaucracy under a royal despot like Louis XV., of whom the guiding spirits were Mesdames de Pompadour and du Barry, did not furnish exactly the machinery for the successful conduct of war in another hemisphere. The very discords between the two French commanders as compared with the mutual coöperation of the English are but a reflection of the French court, where petty and short-sighted treachery and intrigue formed the only permanent rule of conduct. We must remember also that the part of the French nation which might have furnished the best material for such enterprises had under the name of Huguenots been expelled from France three-quarters of a century before, to strengthen the national tissue and fibre of Prussia and England.

In 1754 Dupleix was recalled by Louis XV. and his ministers, on the demand of the English Cabinet, as an absolute condition of peace, at a time when, as one Frenchman said, he was the only man fit to be sent out if he had not been there. Returned to France Dupleix spent his last years in a vain effort to obtain a reimbursement of his own fortune and that of his friends, swallowed up in the gulf opened by the expensive war. His wife died in 1756

¹ Larousse, *op. cit.*

and himself in 1764, after having seen the fall of the colonies and the abasement of that France of whose glory he had dreamed. And Larousse quotes the testimony of an English writer, Campbell.

Much superior in political talents to our agents, if Dupleix had found the same resources and the same support as they in the mother country, it is more than probable that the Empire of India would to-day belong to his compatriots.¹

Labourdonnais, who had besieged and taken Madras, was accused of treachery by Dupleix. Having been taken prisoner by the English and set at liberty, on his return to Paris he was lodged in the Bastille and deprived of his fortune, amounting to nearly three millions of francs. His trial lasted three years and a half, during which he was refused the sight of his wife and children. He was further denied the right of formal defence, but having contrived to make his case known his judges declared him innocent and his honorary titles were restored to him, but he died soon after of a broken heart.

Two years after the recall of Dupleix, Lally-Tollendal, a count of Irish descent, was appointed governor of the French possessions in India. He achieved some brilliant successes against the English, but after almost superhuman exertions also broke down under the failure of supplies and men from home and the want of coöperation among the colonists in India. Transferred, sick and a prisoner, to Madras and then to London, he obtained liberty upon parole from the English to meet his accusers in Paris. For a year he sought redress, when, though urged by friends to make his escape, he was lodged in the Bastille by a *lettre de cachet*. There he remained nineteen months awaiting trial, and was then after two years of violent dispute among his judges found guilty of betraying the interests of the king and condemned to capital punishment.

¹ *Ibid.*

"This then," he said, showing his scars and his white hairs, "is the reward of fifty-five years of services."¹

When the Peace of Paris transferred to England in substance the whole French territory both in North America and India, it may be truly said that the harvest followed from the seed.

The most conspicuous example of French colonization in this century is that of Algeria. We have seen that the centralized and bureaucratic government under the old monarchy was, after the slight interruption by the first revolution, renewed and even strengthened by Napoleon, and was transmitted through the restoration and the monarchy of July to the Second Empire under Napoleon III. It was perfectly natural, therefore, that the development of Algeria should be a purely governmental and military affair, costing far more than it ever brought in in material return, and dragging commerce after it with slow and faltering step, with a marked absence of the individual and corporate self-reliance and enterprise which are the indispensable bases of the founding of a new civilization. It is true that under the Third Republic there is a fresh outbreak of colonial ambition in Africa and the East. Whether it carries any greater elements of permanent success remains to be seen. If it does it will furnish a fresh testimony to the animating force of an emancipated and independent public opinion.

In considering the effect of government in England upon her people it is not necessary to trace the early development of Parliament. It is sufficient to take it up when free institutions in other countries were perishing.

The three great inventions which in the course of the fifteenth century affected the general state of mankind — gunpowder, printing, and the compass — began in the course of the second half of that century to do their work in England also. The personal displays of chivalry

¹ Larousse, *op. cit.*

in the field, as well as the older style of fortification, both became useless before the new engines of destruction. But above all things it was during this time that in most parts of Europe the chief steps were taken towards that general overthrow of ancient liberties which reached its highest growth in the sixteenth century. Europe was massing itself into a system of powers, greater in extent and smaller in number than heretofore. The masters of these powers were learning a more subtle policy in foreign affairs than those who went before them, and they were beginning to rest their trust at home in standing armies. We have reached the time of Louis XI. and Ferdinand of Aragon. This new state of things was not without its influence on England, though our insular position saved us from being so completely carried away as the continental nations. The power of the Crown grew to a pitch which was altogether unknown at any earlier time except under the Conqueror and his immediate successors. Parliaments became more servile. Sometimes they are dispensed with altogether. Arbitrary acts on the part of the Crown are perhaps not more common than in earlier time, but they take a new character. It is no longer general lawlessness but deliberate arbitrary rule. . . .

This, then, was the time of trial for England and her liberties. She and they were now full grown and their strength had to be proved. Her probation went on for more than two hundred years, but now it began. In the end the nation and its liberties proved too strong for the kings. Parliaments were bullied, packed, corrupted; their sittings were stopped for years together; but they were never abolished. The great laws which secured freedom were often broken, but they were never repealed or set aside. The old principles of freedom were never so utterly forgotten, never so utterly trodden under foot, that they could not be called to life again when the favorable moment came. In this, it is plain, the history of England differs from the history of France, of Spain, of most continental countries; and certainly one reason for the difference was that they were continental countries while England is insular. Constant rivalries, constant warfare with immediate neighbors, gave better pretexts for the maintenance of standing armies than could be found in England. . . . Our kings, therefore, without a standing army, could not utterly root out freedom as their continental brethren did. In the worst times they were driven to summon parliaments from time to time, and those parliaments now and then showed traces of the old spirit.

But there were two elements which entered into the formation of the English people.

In 1531, by one of the meanest tricks that ever king played, the whole estate of the clergy was held to have fallen into a *præmunire*

by admitting the legatine authority of Wolsey which he had exercised with the king's full sanction. Their pardon was bought only by an enormous subsidy and by acknowledging the king as Supreme Head on earth of the Church of England, a form of words now heard for the first time. . . . Then came the great legislation of the year 1534 by which the papal authority was wholly abolished, while the Act of Submission on the part of the clergy subordinated all ecclesiastical legislation to the royal will. . . . The title of Supreme Head of the Church, already voted by the clergy, was now bestowed by Parliament, and full ecclesiastical power was annexed to it. The scheme of Henry was now fully established; the religion of England was Popery without the Pope. . . .

But the deaths of particular persons seem but a small matter beside the great revolution which Thomas Cromwell wrought over the whole face of the country by his great work of the suppression of the monasteries. That the power of the state was supreme, as over everything else, so over ecclesiastical foundations, no man in England could doubt. Monasteries had been suppressed on occasion from the earliest times. A general suppression of all the monasteries of the kingdom was clearly within the power of Parliament. . . . In the suppression under Henry V. nearly the whole of the confiscated revenue was applied to works of general usefulness, chiefly to the great educational foundations which were then rising. In the suppression under Henry VIII. by far the greater part of the vast revenues of the monastic houses was squandered or gambled away among Henry's courtiers. Churches and churchyards were granted to private men, to be destroyed or desecrated at their pleasure. The tithes which the monasteries had taken to themselves, to the great wrong of the parish priests and their flocks, were now seized with their other property and granted away to lay rectors.¹

Which had at least this advantage, that they passed into the hands of men who were ready to fight for them and against the restoration of monastic rule.

Under Elizabeth that which was wanting to complete the character of England and Englishmen was added. The religious character of the nation was now fixed, and its religious character had no small share in fixing its political position at home and abroad. The national church retained so much of the middle system of Henry as to hold, in some sort, a middle place between Rome and the Protestant churches of the Continent. But this middle position at no time extended to more than strictly religious points of doctrine, discipline, and cere-

¹ *Encyclopædia Britannica*, article "England."

mony. As a nation, as a power, England has been essentially Protestant from the time of Elizabeth. But the fact of the middle position of the English Church led to the formation of religious bodies at home which parted off from it in opposite directions. And from Elizabeth's day onward, the party of further religious reform has also been the party of political freedom. The Puritan party, it must be remembered, had no more notion of toleration than any other party of those days. Its object, like that of every other party, was not the mere toleration but the exclusive establishment of its own system. But, on the other hand, every change, every debate, helped to bring about religious toleration in the end, and as the Puritan movement was largely a movement against arbitrary authority, it was necessarily a movement in favor of freedom.¹

In considering the effect of Elizabeth's reign upon the national character we must remember that for five hundred years no distinctly foreign army had set foot upon English shores, while the one serious threat during her reign, that of the Spanish Armada, served only to increase the confidence of the nation both in their government and themselves. Except the Catholic revolt of 1569, which was put down with great severity, there was nothing even approaching in resemblance to civil war. The two things taken together offer a curious commentary upon the advocates of war who maintain that it is necessary for strengthening the character of a people. Religious persecution there undoubtedly was, but it worked both ways, and if on the one hand it prevented the Catholic reaction from gaining a foothold in England, it was just rigorous enough to develop the nonconformist faiths which were to tell so powerfully in the next century. In the absence of war which elsewhere absorbed the overflow of restless energy, this was diverted to maritime enterprise, and Drake and Gilbert, Cavendish and Raleigh, though following somewhat upon their Spanish and Portuguese rivals, laid the foundation of that naval supremacy which England has ever since maintained.

¹ *Ibid.*

In wealth of political instruction the history of England in the seventeenth century has perhaps never been surpassed in the world. We have here to do only with the part relating to the colonies. When that little band of pilgrims landed at Plymouth in 1620, it was the direct fruit of the seeds of civil and religious liberty sown under Elizabeth. Totally neglected by the home government and half of them perishing the first winter, they still held their own enough to take firm root in the soil. The Massachusetts Bay Colony and other New England settlements, though in more prosperous circumstances, showed the same spirit. If there was one word which could characterize the whole it was self-reliance, dependent only upon the Divine Being with Whom each man felt himself to be in individual relations. It is a curious reflection that, after the first half-century and the restoration of the Stuarts, as the religious troubles no longer furnished sufficient motive and the country offered very little other attraction, the immigration to New England almost ceased, and the population a century later consisted of the natural increase of a class of men selected under the conditions we have described. Individuals who were for any reason dissatisfied with their lot pushed out with their goods and families to form a new settlement in the wilderness. When we read of outlying villages desolated by the Indians who were stimulated by the French from Canada, it seems as if the settlers must have abandoned them in despair, but still they kept on. So far from assistance from England, their wars with the French and Indians were carried on from their own resources and were varied by perpetual quarrels with the royal governors. It was the same story with differences of degree and motive in all the colonies as far south as Georgia.

When the British conquered Canada observers at home predicted that it was only relieving the colonies from an

immediate danger to set them free for revolt against England. It may be doubted whether history offers any instance of dependent provinces rising against their parent country upon such slight grounds; but they were too self-reliant and too impatient of control to submit even to nominal bonds. The tenacity and resource which held on through those seven years, even though aided by incredible folly and incapacity on the other side, are only equalled by the cool and clear wisdom and judgment which framed and launched the Federal Constitution. Was it race alone or generations of training which accomplished such feats?

We will pass again to the other side of the world. Up to the eighteenth century the relation of Europe to India was simply that of trade, but the arrangements of the different nations were very characteristic.

The Portuguese at no time attempted to form a company, but always maintained their Eastern trade as a royal monopoly. The Dutch had a company incorporated in 1602, but their conquests were made in the name of the State and rank as national colonies, not as private possessions. The French had a series of companies from 1604 to 1719, but we have seen under what auspices. The Spanish "Royal Company of the Philippine Islands," incorporated in 1733, had little to do with India proper.¹

"The Governor and Company of Merchants trading to the East Indies," chartered by Elizabeth in 1600, was as purely an individual affair as the Plymouth colony, for which indeed it formed a precedent of organization. It had only 125 shareholders and a capital of £70,000, the trading being done by individual shipowners, but this capital was increased in 1612 to £400,000 when voyages were first undertaken on the joint-stock account. When Bombay was ceded in 1661 as part of the dower of Catherine of Braganza, it was delivered by the Portuguese in 1665, but instead of being held as a royal possession it was transferred to the East India Company in 1668.

¹ *Encyclopædia Britannica*, article "India."

In 1689 the company determined to consolidate their position in India on the basis of territorial sovereignty, in order to acquire the political status of an independent power in their relations with the Moguls and Mahrattas. To this end they passed the following resolution for the guidance of the local government in India: "The increase of our revenue is the subject of our care as much as our trade; 'tis that must maintain our force when twenty accidents may interrupt our trade; 'tis that must make us a nation in India; without that we are but a great number of interlopers, united by his Majesty's royal charter, fit only to trade where nobody of power thinks it for their interest to prevent us; and upon this account it is that the wise Dutch, in all their general advices that we have seen, write ten paragraphs concerning their government, their civil and military policy, warfare, and the increase of their revenue, for one paragraph they write concerning trade."¹

A purely trading company, however, they remained through all the vicissitudes and extension of their empire, free from all interference except by Parliament until the transfer to the Crown in 1858. Clive, whose name is that of the founder of British rule in India, was a clerk in the company's service in Madras. Warren Hastings, the first governor-general, first went to India in the secretary's department of the civil service at Calcutta. His famous impeachment and trial established the principle upon which the whole British government of India was to be based; namely, a practical despotism on the other side of the globe, but held in firm check and control by public opinion acting through Parliament upon an executive ministry at home. This principle was based upon the East India Bill passed by William Pitt in 1784, after the failure of a similar attempt by Charles Fox in 1782, and which bill with slight modifications continued to direct Indian affairs till the abolition of the company in 1858. With each periodical renewal of the company's charter new restrictions were enforced and the nomination of the governor-general by the responsible ministry in England

¹ *Op. cit.*

secured a succession of public servants such as has never been surpassed. And this system of combined strength and responsibility extended through the whole government of the country. In remote provinces where agents were invested with arbitrary power, and oppression and corruption might have had full sway, official purity, impartiality, and efficiency are proved by hosts of witnesses. Of course grievous and disastrous mistakes have been made, and the government of nearly three hundred millions of people by a handful of foreigners of an entirely different race cannot be above reproach, but upon the whole the rule of the English in India is unique in history and must challenge the admiration of the world. The effect of such a training of generations and such traditions of administration has again manifested itself in the achievements in Egypt of the last fifteen years.

It is worth noting, further, that whereas the wealth from the Spanish and Portuguese colonies accrued largely to the Crown and served as an instrument of power and corruption and of making the government independent of the people, in England the wealth from India passed through the company into the hands of individuals, and though it may have led to offensive display and even to corrupt nominations to Parliament, was powerless to shake the framework of government which had been building up for more than two hundred years.

The British possessions throughout the world are divided into crown colonies governed by officials appointed from the mother country, of which India furnishes the type, and those like Canada and Australia with a full-blown constitutional government, a governor appointed in England, and an assembly of two houses of which one at least is elected by popular vote. The political development of these latter might be of interest in illustrating the principles put forward in this book, but on the one

hand their history in this respect has not yet been recorded in a form to be fully available, and on the other, as the nominal executive is appointed from England and as the ministry is in effect chosen by and dependent upon the legislature, their governments are so divergent from those of the United States and so identified with that of Great Britain as to add but little to what has been said of the latter.

The review which has here been made of the effect of governments upon the character of their people has had for its object the demonstration of the immense influence for better or for worse which government in the United States may exercise upon the vast conglomerate of races which is here to be fused into one mass, an influence much more powerful, or at any rate much more definite, than the reciprocal action of the people upon the government. In reinforcement of the main principle we may quote a passage in point, though written for another purpose.

Without denying that there are some innate distinctions of character between the subdivisions of the Aryan race, there is, I think, abundant evidence that they have been enormously exaggerated. Ethnologically, the distribution and even the distinction of Celts and Teutons are questions which are far from settled, and the qualities that are supposed to belong to each have very seldom the consistency that might be expected. Nations change profoundly in the very respects in which their characters might be thought most indelible, and the theory of race is met at every turn by perplexing exceptions. No class of men have exhibited more fully the best of what are termed Teutonic characteristics than the French Protestants. The noblest expression in literature of that sombre poetic religious imagination which has been described as especially Teutonic is to be found in the Italian Dante. The Teutonic passion for individual independence and consequent inaptitude for organization have not prevented the modern German Empire from attaining the most perfect military organization in the world. The Irish were at one time noted for their sexual licentiousness. For the last two centuries they have been more free from this vice than the inhabitants of any other portion of the empire. As late as the eighteenth

century Arthur Young traced the chief evils of France to the early and improvident marriages of the French peasantry. Such marriages are now probably rarer in France than in any other considerable country in Europe.¹ Different nations of the same sub-race exhibit very different qualities, and the more the circumstances of their history are examined the more fully those qualities are usually explained.²

Since this chapter was written (in 1897), events which probably very few men in the country could have even imagined have come to cast a new and lurid light upon its immediate subject. The United States have departed from their position of compact isolation and entered upon the full tide of colonial dominion. Not only are Cuba and Porto Rico—which are at least in our immediate neighborhood and covered by the so-called Monroe Doctrine—about to be added as integral parts of the national territory, but Hawaii is already annexed, and it seems probable that a similar destiny awaits a greater or less portion of the Philippine Islands, and that a second way-station will be secured in one or more of the Ladrões. The complications thus implied in the relation to foreign nations need not be here discussed. The new problems

¹ To which may be added the remark that while the French population of France has been shown to be nearly stationary if not declining in the last half-century, precisely the same race in Lower Canada is to-day among the most prolific of modern civilized peoples. Though it may appear fanciful, we have a strong conviction that this feature of modern France is owing to the provision of the code of Napoleon, which requires the equal division of property among children. Men may arrive at that conclusion late in life of their own accord and as an act of justice, but when they see compulsion staring them in the face in advance, they will almost certainly limit their families. In the same direction is the testimony of the following passage, referring to the old *régime* :—

“The burden of the militia fell almost wholly on the peasantry, and as married men were exempted, it was one cause of the commonness of improvident marriages among them, which contrasts so remarkably with the rareness of such marriages in our day.” (Lecky, *op. cit.*, Vol. V., p. 384.)

² Lecky, “History of England in the Eighteenth Century,” Vol. II., Chap. VII., p. 413.

of government are quite sufficient to absorb present attention. That these millions of population, alien in race, religion, traditions, and education, accustomed to so low a standard of living that no emigration thither from this country could take place except of a ruling and not over-scrupulous class, should be admitted to the Union as self-governing States seems nothing less than deliberate suicide. But what other machinery have we available for their government? A temporary expedient seems likely to be adopted in the shape of a commission, which for reasons already given would be hardly less disastrous. One of the arguments put forward for expansion is that England has colonies and has prospered through them. But in all her colonies which are not self-governing, and therefore only nominally dependent, the success of England, that which has distinguished her from other colonial powers, lies in the government of dependencies by a despotic ruler, held at the same time to a strict responsibility to public opinion through an executive ministry in direct and public contact with Parliament.

Any such machinery we have shown to be wanting to us. Government by legislature, if our argument is correct, has proved to be a failure in internal affairs as it always has been and apparently always will be. Colonial government of the same kind can only lead to more swift and certain collapse. Even the vast colonial commerce of Great Britain, which is pointed out as the great object of our emulation, is accompanied with conditions as free to the commerce of other nations as to her own. If we attempt, as we almost certainly shall, to extend to our colonies the rigid protective tariff system which prevails at home, which was the English as well as the general system in the eighteenth century, and which Spain has adhered to to the end, it will only render our failure more conspicuous. Again, the vast extension of the navy

and, to a less extent, of the army will call imperatively for stronger government, and unless we can find the way to render that at the same time responsible to and controlled by public opinion, it will lead straight on to military despotism.

It is a curious reflection, that the outcry for expansion of our commerce means simply the securing of profit for a comparatively few individuals of the trading class, while the burdens and the expense of colonial dominion, many times outweighing those profits, must be borne by the mass of the people of the United States. When a war with Spain was wanted the commercial spirit was denounced as clinging to dishonorable peace. When the Philippines are wanted the commercial spirit is made an object of the highest consideration.

CHAPTER XXX

EXECUTIVE RESPONSIBILITY

THUS far we have endeavored to show that the danger and trial of popular government consist not mainly in universal suffrage or what may be called the working force of government, but in the machinery for the application of that force, that is, the relative position of the executive and the legislature; the judiciary, which though perhaps equally important is not so prominent, being for reasons already assigned, and only for those reasons, here left out of consideration. It has appeared that a struggle for supremacy is always going on between the two branches, in which the legislature, being quite as grasping for power, has great and manifest advantages; that the predominance of a legislature has practical anarchy as its inevitable result, and that this unless corrected must sooner or later, and with popular consent more or less fully expressed, lead to a violent restoration of executive power in the form of military despotism. The problem which has thrust itself upon us is how an executive power may be established, (1) strong enough to hold in check the disturbing forces of private, corporate, and class interest and greed, and to carry on the government impartially with a single eye to the greatest average welfare and happiness of the people as a whole, and (2) how such an executive may be forced to exercise its power in just that way without abuse or encroachment, by the pressure of a watchful legislature acting for and responsible to the whole people, not attempting itself to carry on the govern-

ment, but insuring that it is carried on rightly by constant public criticism and the granting or withholding of money.

Before seeking light upon this problem in the United States, there are one or two reflections which may well be taken into account. Allusion has already been made to a disposition largely prevailing among our people to deprecate any serious criticism of our governmental machinery. We are willing enough to criticise public men as individuals, especially from a party point of view; we are more than willing to heap abuse upon the people because political results are not satisfactory, in short, because they do not make bricks without straw; but any suggestion that the constitutional adjustment of the different branches is defective, any attempt to test this by the standard of other governments, is at once objected to as unpatriotic and un-American in its depreciation of our institutions. Now there are two ways of being patriotic: one is to assume that we have found the philosopher's stone, that this unique experiment of government has been delivered to us once for all as the chosen people; that all the rest of the world is given over to darkness and perdition and to be regarded by us, the elect, with pity and contempt; and that if any signs of weakness do manifest themselves they must be covered up and concealed lest they should throw discredit upon the sacred formulas. It reminds one of the dogmatic theology which prevailed more than two centuries ago. The other way is to admit that our government, like all others, is an experiment to be tested by results; that its immense importance to this country and the world calls for unsparing examination and criticism of these results and their relation to causes; that it is our highest duty to effect such repairs and readjustment as will transmit unimpaired to our children the precious inheritance which our fathers have given to us.

Another reflection is upon the extreme simplicity which

supposes that political arrangements adopted more than a century ago, with reference to a scanty and comparatively homogeneous population of three millions in a primitive state of society and confined to the seaboard strip of the thirteen original States, — that these arrangements can be safely left to work out their own application to an immense conglomerate of seventy millions of people of all races and nations — and which will probably be more than doubled in another century, — with all the vast material and social changes which have taken place, and occupying forty-five States stretching across the whole continent.

Our fathers were wise and great men, but facts both physical and intellectual have since thrown light upon the science of government of which they knew nothing; just as Macaulay remarks that every schoolboy is now familiar with developments of physical science of which Sir Isaac Newton never dreamed. We have grappled boldly and successfully with the deepest problems of physical science, almost annihilating distance and time in ameliorating the conditions of human life. The one problem which we have not dared or have felt ourselves incompetent to touch is that which includes the value of all others, — the methods of government. This does not at all imply the necessity of changes of constitutional form. One of the greatest merits of the Federal Constitution is the difficulty of changing it. While the State constitutions have been recast in a spirit of the crudest empiricism, till in many the original ideas have been almost lost sight of, that of the nation remains unchanged unless in minor details. For ourselves we rejoice in that, holding that it is much better to learn to work the Constitution as it is, and that if we once begin to make changes we shall be launched upon an unknown sea, under sail but without a rudder. There is room enough for modification in the application of the Constitution without risking changes in its form.

A third consideration is as to the practice of charging all defects of government to the perversity and shortcomings of the people; of assuming that if they would attend properly to their duties all would go well and that government will be as good as the people is and cannot be any better. Without now inquiring how far this position is justified it may at once be said that it destroys all hope. With the large foreign immigration, the more crowded population, the more intense struggle for life, the widening extremes of wealth and poverty, it is very certain that the population of this country, politically at least, will never be any better than it is now. If all our reliance is upon improvement in that direction we may well say, 'Let us eat and drink, for to-morrow we die,' or imitate the conduct of the Indian chief in the rapids of Niagara, who finding his efforts to force his canoe against the stream were unavailing, folded his arms and sang his death song as he went over the cataract.

But the case is wholly different if the trouble is in our methods of government. If it can be shown that the working force of public opinion is in the main sound and reliable and that its failure turns upon defects in the machinery by which it is brought to bear, there is on the contrary every reason to hope. If it can be made to appear how and why our institutions work badly and how they may be improved in their operation so as to produce desired results, then there is no limit as to what may be achieved or to encouragement in effort. From that point of view the highest patriotism is that which points out the most weak places in our institutions, provided this is accompanied with practical suggestions of remedy. We are of those who prefer even a blind faith in the people to a blind faith in institutions. The increasing disposition towards such criticism is one of the most hopeful and encouraging signs of the time. The multiplication of Good

Government clubs, Citizens' Associations, and similar movements which look towards organization rather than crude appeals to the people, even if their work is still almost wholly empirical and based upon no general principle, are yet signs that public opinion is turning in the right direction.

The leading principle on which our government is based may be said to be the separation of executive and legislative power; the leading cause of failure, that we have never carried the principle into effect. That the President is installed in the White House at one end of Pennsylvania Avenue and Congress in the Capitol at the other, does indeed involve the physical separation of the two branches, but by no means, as we have already seen, that of their powers. For this it is necessary that they should come physically into contact; that the executive should have just as good an opportunity of stating its position and defending its rights before the great arbitrating tribunal of public opinion as the legislature has, and that each branch should publicly enforce responsibility upon the other.

The prescription for the complaint is furnished to us by good authority. In the year 1881 a select committee of the United States Senate was appointed to consider a bill (S. 227) to provide that the principal officer of each of the executive departments may occupy a seat on the floor of the Senate and House of Representatives. On the 4th of February in that year, the chairman, Hon. George H. Pendleton, reported back the bill and recommended its passage as follows, said report being signed unanimously by the eight members of the committee, consisting of George H. Pendleton, W. B. Allison, D. W. Voorhees, J. G. Blaine, M. C. Butler, John J. Ingalls, O. H. Platt, and J. T. Farley; a cordial agreement, be it observed, of Democrats and Republicans. The bill provides:—

"That the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, the Attorney-General, and the Postmaster-General shall be entitled to occupy seats on the floor of the Senate and House of Representatives, with the right to participate in debate on matters relating to the business of their respective departments, under such rules as may be prescribed by the Senate and House respectively.

"That the said Secretaries, the Attorney-General, and the Postmaster-General shall attend the sessions of the Senate on the opening of the sittings on Tuesday and Friday of each week, and the sessions of the House of Representatives on the opening of the sittings on Monday and Thursday of each week to give information asked by resolution or in reply to questions which may be propounded to them under the rules of the Senate and House; and the Senate and House may by standing order dispense with the attendance of one or more of said officers on either of said days."

The first section provides for a voluntary attendance, to take part in debate. The second section provides for a compulsory attendance, to give information. In order to carry into effect the second section, rules somewhat like the following should be adopted by each house, *mutatis mutandis* :—

"That the Secretary of the Senate shall keep a notice-book, in which he shall enter, at the request of any member, any resolution requiring information from any of the executive departments, or any question intended to be propounded to any of the Secretaries, or the Postmaster-General, or the Attorney-General, relating to public affairs or to the business pending before the Senate, together with the name of the member and of the day when the same will be called up.

"The member giving notice of such resolution or question shall, at the same time, give notice that the same shall be called up in the Senate on the following Tuesday or Friday; *Provided*, That no such resolution or question shall be called up, except by unanimous consent, within less than three days after notice shall have been given.

"The Secretary of the Senate shall, on the same day on which notice is entered, transmit to the principal officer of the proper department a copy of the resolution or question, together with the name of the member proposing the same, and of the day when it will be called up in the Senate.

"In the Senate, on Tuesday and Friday of each week, before any other business shall be taken up, except by unanimous consent, the resolutions and questions shall be taken up in the order in which they have been entered upon the notice-book for that day.

"The member offering a resolution may state succinctly the object and scope of his resolution and the reasons for desiring the information, and the Secretary of the proper department may reply, giving

the information or the reasons why the same should be withheld, and then the Senate shall vote on the resolution, unless it shall be withdrawn or postponed.

"In putting any question to the Secretaries, or the Attorney-General, or Postmaster-General, no argument or opinion is to be offered, nor any fact stated, except so far as may be necessary to explain such question; and in answering such question the Secretary, the Attorney-General, or Postmaster-General shall not debate the matter to which the same refers, nor state facts or opinions other than those necessary to explain the answer."

These rules relate only to the execution of the last section of the bill—to giving information—to putting and answering questions. They in no wise affect the debate permitted and invited by the first section. They have been framed after a most careful examination of the rules and modes of procedure of the British Parliament and French Assembly, and are believed to contain the best provisions of both. They are framed to accomplish the purpose of obtaining the needed information with the least interference with the other duties of the heads of departments. No question can be called up unless after three days' notice to the Secretary; and the answers are limited to the specific point of the question, in order that accuracy may be attained. These rules may be amended as experience shall show their defects.

The bill confers a privilege and imposes a duty on the heads of departments. The privilege is to give their suggestion and advice in debate, by word of mouth; the duty is to give information orally and face to face.

The report, which follows the above, sets forth some of the advantages of the measure, its consistency with the Constitution of the United States, and the almost universal prevalence of a corresponding practice in all countries which make even a pretence to representative government.¹ Almost at the outset the report says:—

The advantages of the system proposed are so obvious and manifold that the committee feels itself relieved from a detailed statement of them, and confines this report to an examination of the question of its constitutionality.

It seems somewhat strange that a measure thus unanimously endorsed by a committee of both parties, presenting

¹ See Appendix D for the list of countries given in the report as following a similar practice.

advantages so obvious, and with so complete a demonstration of its accordance with the Constitution, should never since have received the slightest attention from either house of Congress or from the executive. The explanation of this circumstance is of even more importance than the actual analysis of the measure itself. In fact, the dismissal by the report, in the few words above quoted, of the whole question of its political bearing has an exceedingly suspicious look, as if the committee did not care to assume the burden of a discussion in which they saw plainly that a tide of opposition was sure to set in.

In reference to this measure there are three points to be considered:—

1. The advantages offered by the proposed change.
2. The objections to it.
3. The nature of the opposition to be encountered.

The first advantage is that it would bring to bear for the first time in the discussion of legislation the public interest as a whole. We have seen how every member of both houses has a precisely equal right to propose bills upon any namable subject. As it is obviously impossible that all should be considered, all must be referred to the standing committees, made up by the Speaker in the House or elected in the Senate. These committees, like the main bodies, are made up of precisely equal members from districts. No one of them has any authority to speak for the whole country or to oppose the schemes of other districts or the private interests in them. The committee reports are, therefore, the result of a composition of forces, a compromise arrived at by trading among local and party interests for mutual support and against mutual opposition. When the report comes before the House or the Senate, it still meets only representatives from districts in the House

or from States in the Senate, two kinds of interests having thus to be settled with.

If the members of the Cabinet were present in either house they would, by virtue of their office, stand above all the members and offer a central point to which independent and single members could appeal. When the committee reports come in, objectors, instead of challenging an impersonal and intangible majority, could summon the head of a department to give his opinion as to the bearing of a measure upon the public interests. His replies and comments would go over the whole country and awaken an interest such as no debate now does, and for the very simple reason that the official represents all parts of the country and interests all.

Much more than this, the work would begin with the session. When the mass of bills and resolutions was pouring in at the beginning of the session and being referred to committees, certain members would appeal to the cabinet officer to demand immediate attention for some particular subject of pressing interest, say the currency or the tariff, instead of waiting for it to be bargained and fought over in committee during a whole session, and then reported upon when debate is impossible. A secretary who should fail to respond to such an appeal would at once lose weight with the country. If he did respond to it neither the Speaker nor the House would dare to refuse him a hearing, and the subject would be considered, as it never is now, from a national point of view.

It is not merely that the cabinet officer represents the whole country as compared with localities. He also represents the administration of the government, which cannot be said of any member or officer either of the House or the Senate or of their committees. To these latter legislation is mainly an instrument for promoting party success, in which their own is included, its effect upon the govern-

ment being only a secondary consideration and one which must give way when it comes in conflict with the main question. However much they may individually desire to promote good government and however much the constituents of any number of them may look to them to promote it, we have seen abundant reasons¹ why their efforts must end in failure. But the main object of the cabinet officer must be the success of administration. It is that, and that only, upon which his own success and reputation must depend. From his leading position, therefore, he can bring to bear upon all kinds of legislation a crucial test which nobody else can, — their relation to the practical working of government.

Again, the action of the cabinet officer would not be confined to the discussion of reports of committees. If, as suggested, he was called upon at the beginning of the session to discuss certain principles, it would very quickly follow that he would not limit himself to the plans either of members or of committees, but would bring forward plans of his own; and from the necessities of his position those plans must be framed, first, with an eye to the public interest as a whole, and, second, to the requirements of administration, whereas the plans of members, even if framed with that intention, would be quickly manipulated by the committees in a different direction. Hon. Hannis Taylor,² while favoring the admission of the cabinet officers to Congress, maintains that that would be useless unless they were given the initiative of legislation. That is true enough, but to affix such a condition in advance would be to increase, to the point of impossibility, the difficulty of procuring their admission in the face of legislative opposition. The first thing is to get them in and then trust to a process of evolution to achieve the rest. Of

¹ See Chap. XVIII.

² *North American Review* for August, 1894.

course the attempt would be made to refer the secretary's plans with all others to the standing committees and then would arise a conflict to be noticed presently.

From this again would follow that the attention of Congress, instead of awaiting the decision of fifty committees upon thousands of subjects, would be concentrated, through the action of the Cabinet and at the opening of the session, upon a few great questions of public importance and in the order of their importance. In the same way, instead of receiving indifferently thousands of bills on all possible subjects and referring them to the committees, the practice would grow up of deciding by a first reading and in the light of executive guidance and criticism whether particular proposals should be taken into consideration at all, with a manifest economy of time and efficiency on the part of the houses, and with protection of great business interests from constant and harassing uncertainty and fear.

The next advantage to be gained is, that the House would have leaders, of whom there are now none and no possibility of any. The chairmen of the committees and especially of the Ways and Means are sometimes spoken of as leaders. But they are so only in a limited and temporary sense. They are, like all other members, the representatives either of a district or a State. They represent neither the country nor the administration of the government. If they are not fettered by party and personal jealousy within their committees they are certain to be so in the houses, and they possess no official authority of any kind. The Speaker of the House offers the nearest approach to a leader; but he is again only a district member and represents neither the country nor the administration. He is elected by the party majority, makes up the committees and guides the procedure in their interest. He is at once spoiled for the function of an impartial presiding officer, protecting the minority and enforcing equitable

methods of procedure, and incompetent for that of a responsible political leader. The position of Speaker Reed in the Fifty-fifth Congress is curiously illustrative of the necessity of a leader and the unfitness of the Speaker to fill that office. Though Mr. Reed undoubtedly used his power with good intentions and even good results, its danger and impropriety can hardly be questioned. On the other hand, the members of the Cabinet are the natural leaders of the houses. Representing through the President at once the whole country and the administration, they are the fittest persons to take the guidance and control of legislation, subject to the criticism and approval of the houses. They form a point of attack open to the minority, for whom an impersonal majority is always beyond reach and around which independent members can always rally in defence. Leaders on one side would compel a resort to leaders on the other, the opposition would be compelled to select their strongest man to lead and the others most competent to follow in resistance to an organized majority, and thus discipline and coherence would replace the anarchy of a mob; while the Speaker in a wholly new character would act as an umpire, enforcing impartially the rules of the House and securing fair play to both sides.

Then would become possible that which is at once most needed and most lacking in our politics, — personality. In place of a wholly impersonal House, split up into equally impersonal committees, with now and then an individual bobbing up for a brief hour and then disappearing, with a Speaker clothed in a garb of power which is a total misfit, and an executive excluded from all voice in deliberation and condemned to silence except for an occasional fulminating negative issuing from a cloud of more than suspected intrigue, we should have a group of men, agents, both as a whole and individually, of one head, less visible but not

less felt, the President, elected by the nation. These men consulting together, but each for his department, would place before Congress in the first days of the session a statement of the wants and opportunities of that department and would ask for an assignment of dates for the discussion. All winter long, in place of the silence and the practical secrecy of the committees, would go on the conflict, under the firm and impartial control of the Speaker, as to what powers, what legislation, and what supplies shall be granted or refused by Congress to the executive. The qualities, character, and ability of individuals, from the President down through the Cabinet and the members of the houses, would be as visible to the whole country as those of the actors in a drama. Members could go to their constituents in the intervals of sessions with abundant material for explanation and comment upon the men and the scenes in which all would be interested. They would not hesitate to propose themselves as candidates for reelection in support of such men and such measures. The elections, instead of being manipulated by caucus nominations from below, would be guided by force of character and ability from above. The power of principles would be combined with the power of men, and we should penetrate that dormant mass of public opinion which passes by with indifference, contempt, or disgust the manoeuvres of caucus politicians even of the best and most disinterested class, but is capable of being aroused to a white heat of enthusiasm by a clear presentation of moral principles embodied in individuals. Then, when members were looked to to render public service and achieve public reputation instead of merely receiving a place and a salary, it might be possible to break through the requirement that members shall reside in the district which they represent.

Perhaps the idea here presented can be best illustrated

in the case of the finances. We have seen¹ what chaos is produced by a total disjunction of revenue and expenditure, with an invincible repugnance to put on taxation, except so far as it will favor the demands of private interests, and an unchecked lavishness in expenditure, both resulting in an annual though uncertain deficit; by the absence of any stable policy with regard to the public debt and still more with regard to the currency; all these things resulting from the effort of Congress to grasp the whole power of government and its total inability to exercise it for any good purpose. Suppose the Secretary of the Treasury were to stand upon the floor of Congress. Not only by independent members but by the whole press of the country and by all sorts of public meetings and organizations he would be challenged and summoned to bring some order out of this chaos. He would be absolutely compelled to take the initiative into his own hands. None but the very strongest of men, physically, intellectually, and technically, could stand such a strain. Weak incumbents, men who owe their advancement to political combinations, would be swept away in rapid succession, until sooner or later by a process of the severest competition a man would come to the top so clear in his ideas, such a master of his subject and the mode of presenting it, so high in personal character and so impregnable in debate, that the voice of the country would peremptorily order Congress in both houses to stop its wrangling and log-rolling and carry out the wishes of the secretary, subject to the condition that he should show at every step progress and results corresponding to his promises and pretensions.

Suppose what was wanted in the presidency of the United States was a champion billiard player; that we should provide for large conventions to nominate candi-

¹ See Chap. XX.

dates of whom nothing was known except through the assurance of their friends that they were amiable, virtuous, and intelligent men and would give us the very best kind of billiard playing; that after one was elected we should provide for two bodies of men, who without his coöperation should establish rules of the game, what shots should be made and how, the mode of handling the cue and the movements and attitudes of the player; that upon these rules, as to which he would have only a veto upon the most obnoxious, the President should be asked to play billiards in public for the first time. Could we wonder if the result excited the laughter of mankind? On the other hand, would not the simplest dictates of common sense and experience lead us to set up a billiard table and invite all comers to play? As competition reduced the numbers from hundreds to perhaps half a dozen what eager excitement would spread over the country, especially if there was an elected body of judges, criticising and reporting the game and enforcing rules adopted upon the suggestion or proposal of the players themselves! Suppose, then, that owing to a divided judgment two players were in the end presented as candidates for election, could there with either of them be any doubt that we should have one of the first billiard players in the world?

Some such process will have to be gone through if we ever again expect to have presidents and cabinets worthy of the people and government of the United States. And while the process was going on Congress would form an open arena in which individuals were training themselves and manifesting their qualities for public life, and thus furnishing material as available as that which by the same method is constantly brought forward for the immense achievements of private enterprise.

But perhaps the most important advantage of all would be the enforcement of direct responsibility upon the

President. In a former chapter¹ we have dwelt upon the very limited power which he possesses. But that limitation applies to open and legitimate power for the general interest of his constituents. For promoting private and party interests, that is, for playing into the hands of Congress, the exact reverse is true ; his power, for the extent of his term, being almost unlimited. Under our methods of government, no direct and public question can ever be addressed to the President by anybody. Apart from newspaper and congressional gossip, all that can ever be known about him is what he chooses to say, mainly in communications to Congress. It is quite possible, therefore, for a President to pose before the country as pursuing a noble and high-minded policy, but as being overborne by public opinion expressed through Congress ; when, in fact, he may be merely the instrument, voluntary or otherwise, of corrupt personal and party intrigues, brought to bear by a class of men whom we have described. And this is all the more likely in that such men will see in him at once their most available instrument, and will reward him by exalting him and sounding his praises through the country by every agency at their command. On the other hand, sullen defiance and backbiting are all that a President can expect who ventures to oppose the public interest to the factions and intriguers who are pushing him forward. No President has ever yet dared to take up the glove and appeal to the people as against Congress.

If the Cabinet, the direct agents of the President, had to stand up in Congress and answer face to face the questions of independent members and those of the minority, it would be impossible for the President to appear, or be made by others to appear, different from what he really is. He could be compelled to declare his policy and motives, and be judged at every step by the conformity of

¹ Chap. XVI.

his actions to them; an obligation which, to a President possessing the requisite strength of character, would at the same time furnish the highest opportunity.

It may be said that this is rhapsody without practical relation to our institutions, our government, or our people. We have next, therefore, to take up the objections in detail. Note, first, that what is here contended for is the recommendations, *verbatim et literatim* with neither more nor less, of the Senate report above alluded to. A report of this kind signed by an entire committee of both parties, including men of such practical experience as Messrs. Pendleton, Allison, and Blaine, cannot be rejected as fanciful or irrelevant and is entitled to respectful consideration.

Besides referring to the practice of other countries the Senate committee enter into an argument for its constitutionality.

The power of both houses of Congress, either separately or jointly, to admit persons not members to their floors, with the privilege of addressing them, cannot be questioned. "Each house may determine the Rules of its Proceedings," is the provision of the Constitution. A precedent directly in point has stood unchallenged since the first year of the organization of the government. The act of 1789, organizing the Treasury department, provided that "the Secretary of the Treasury shall, from time to time, digest and prepare plans for the improvement and management of the revenue and for the support of the public credit . . . shall make report and give information to either branch of the legislature, in person or in writing, as may be required, respecting all matters referred to him by the Senate or House of Representatives or which shall appertain to his office."

When Hamilton made his great report on the public credit in 1790, he was, on motion after discussion, required to make it in writing, because the details were so numerous that, delivered orally, they would not remain in the memory of his hearers; but the power and the propriety of requiring the personal presence of the Secretary were not then called in question, nor have they been questioned at any time since. This bill only permits and enjoins that to be done by all the secretaries at convenient times, which the law of 1789 required and permitted to be done at any time by the Secretary of the Treasury.

We are dealing with no new question. In the early history of the government communications were made by the President to Congress orally, and in the presence of both or either of the houses. Instances are not wanting — nay, they are numerous — where the President of the United States, accompanied by one or more of his Cabinet, attended the sessions of the Senate and House of Representatives in their separate sessions, and laid before them papers which had been required and information which had been asked for.

"*Wednesday, July 22, 1789.* — The Secretary of foreign affairs (Mr. Jefferson) attended, agreeably to order, and made the necessary explanations." — *Annals of Congress, First Congress*, Vol. I., p. 51.

"*Saturday, August 22, 1789.* — The Senate again entered on executive business. The President of the United States came into the Senate Chamber, attended by Gen. Knox, Secretary of War, and laid before the Senate the following statements of facts, with the questions thereto annexed, for their advice and consent." — *Annals of Congress, First Congress*, Vol. I., p. 66.

And again on the Monday following the President and Gen. Knox were before the Senate.

"*Friday, August 7, 1789.* — The following message was received from the President of the United States, by Gen. Knox, the Secretary of War, who delivered therewith sundry statements and papers relating to the same." — *Proceedings of House of Representatives, Annals of Congress*, Vol. I., p. 684.

"*Monday, August 10, 1789.* — The following message was received from the President, by Gen. Knox, Secretary of War, who delivered in the same, together with statement of the troops in the service of the United States." — *Proceedings of House of Representatives, Annals of Congress*, Vol. I., p. 689.

Instances of this kind might be almost indefinitely multiplied, but these serve sufficiently to exhibit the practice established at an early day by those who framed the Constitution. The committee refers to the *Annals of Congress*, at the pages cited, for very interesting details of the proceedings of those respective days. They are too long to be copied here in full.

The committee then discuss the difference referred to above between the physical separation, the isolation of the branches, and the separation of their powers.

Your committee is not unmindful of the maxim that in a constitutional government the great powers are divided into legislative, executive, and judicial, and that they should be conferred upon distinct departments. These departments should be defined and maintained, and it is a sufficiently accurate expression to say that they should be

independent of each other. But this independence in no just or practical sense means an entire separation, either in their organization or their functions— isolation either in the scope or the exercise of their powers. Such independence or isolation would produce either conflict or paralysis, either inevitable collision or inaction, and either the one or the other would be in derogation of the efficiency of the government. Such independence of coequal and coördinate departments has never existed in any civilized government, and never can exist.

If there is anything perfectly plain in the constitution and organization of the government of the United States, it is that the great departments were not intended to be independent and isolated in the strict meaning of these terms; but that, although having a separate existence, they were to coöperate, each with the other, as the different members of the human body must coöperate with each other in order to form the figure and perform the duty of a perfect man.

The committee examine the probable effect upon the executive, and it is interesting to observe how carefully they steer clear of any reference to the effect upon the legislature, to which body the report is made.

It has been objected that the effect of this introduction of the heads of departments upon the floor would be largely to increase the influence of the executive on legislation. Your committee does not share this apprehension. The information given to Congress would doubtless be more pertinent and exact; the recommendations would, perhaps, be presented with greater effect, but, on the other hand, the members of Congress would also be put on the alert to see that the influence is in proportion only to the value of the information and the suggestions; and the public would be enabled to determine whether the influence is exerted by persuasion or by argument. No one who has occupied a seat on the floor of either house, no one of those who, year after year, so industriously and faithfully and correctly report the proceedings of the houses, no frequenter of the lobby or the gallery, can have failed to discern the influence exerted upon legislation by the visits of the heads of departments to the floors of Congress, and the visits of the members of Congress to the offices in the departments. It is not necessary to say that the influence is dishonest or corrupt, but it is illegitimate; it is exercised in secret by means that are not public— by means which an honest public opinion cannot accurately discover, and over which it can therefore exercise no just control. The open information and argument provided by the bill may not supplant these secret methods,

but they will enable a discriminating public judgment to determine whether they are sufficient to exercise the influence which is actually exerted, and thus disarm them.

It has been objected that the introduction of the heads of departments on the floor would impair the influence of the executive power; that it would bring them and Congress in closer relations and thus lessen their dependence on the President, and to that extent deprive him of his constitutional power and relieve him of his constitutional responsibility. It would be enough to say, in answer to this objection, that no power exists anywhere to diminish the duties or powers or responsibility imposed by the Constitution upon the President. The committee ventures again to repeat that the effect of the bill does not seek to — and will not — aggrandize or impair the executive power as defined in the Constitution and vested in the President.

The committee further allude to what is here so strongly insisted upon, — the development of individuality, mainly, however, with reservation to the executive.

This system will require the selection of the strongest men to be heads of departments, and will require them to be well equipped with a knowledge of their offices. It will also require the strongest men to be the leaders of Congress and participate in debate. It will bring these strong men in contact, perhaps into conflict, to advance the public weal, and thus stimulate their abilities and their efforts, and will thus assuredly result to the good of the country.

The report closes with a notice of the objection often made that the Cabinet are already overworked, and could not possibly find time to do what is proposed.

If it should appear by actual experience that the heads of departments in fact have not time to perform the additional duty imposed on them by this bill, the force in their offices should be increased, or the duties devolving on them personally should be diminished. An under-secretary should be appointed to whom could be confided that routine of administration which requires only order and accuracy. The principal officers could then confine their attention to those duties which require wise discretion and intellectual activity. Thus they would have abundance of time for their duties under this bill. Indeed, your committee believes that the public interest would be subserved if the secretaries were relieved of the harassing cares of distributing clerkships and closely supervising the mere machinery of the department. Your committee believes that the adoption of this

bill, and the effective execution of its provisions, will be the first step towards a sound civil service reform, which will secure a larger wisdom in the adoption of policies, and a better system in their execution.

In the appendix to the report is given an extract from the work of Hon. Joseph Story on the Constitution of the United States, published in 1833. Note again that this is wholly devoted to a reform of the executive. Everybody is ready to aim a blow at that branch. Nobody ventures to intimate that any improvement is possible in the organization and procedure of the legislature.

The heads of the departments are, in fact, thus precluded from proposing or vindicating their own measures in the face of the nation in the course of debate, and are compelled to submit them to other men who are either imperfectly acquainted with the measures, or are indifferent to their success or failure. Thus that open and public responsibility for measures which properly belongs to the executive in all governments, and especially in a republican government, as its greatest security and strength, is completely done away. The executive is compelled to resort to secret and unseen influences, to private interviews and private arrangements, to accomplish its own appropriate purposes instead of proposing and sustaining its own duties and measures by a bold and manly appeal to the nation in the face of its representatives. One consequence of this state of things is that there never can be traced home to the executive any responsibility for the measures which are planned and carried at its suggestion. Another consequence will be (if it has not yet been) that measures will be adopted or defeated by private intrigues, political combinations, irresponsible recommendations, and all the blandishments of office and all the deadening weight of silent patronage. The executive will never be compelled to avow or support any opinions. His ministers may conceal or evade any expression of their opinions. He will seem to follow when, in fact, he directs the opinions of Congress. He will assume the air of a dependent when, in fact, his spirit and his wishes pervade the whole system of legislation. *If corruption ever eats its way silently into the vitals of this republic it will be because the people are unable to bring responsibility home to the executive through his chosen ministers.*¹ They will be betrayed, when their suspicions are most lulled, by the executive under the disguise of an obedience to the will of Congress. If it would not have been safe to trust the heads of departments as representatives to the choice of the people as their con-

¹ The italics are ours.

stituents, it would have been at least some gain to have allowed them seats like territorial delegates in the House of Representatives, where they might freely debate without a title to vote. In such an event their influence, whatever it would be, would be seen and felt and understood, and on that account would have involved little danger and more searching jealousy and opposition, whereas it is now secret and silent, and from that very cause may become overwhelming. One other reason in favor of such a right is that it would compel the executive to make appointments for the high departments of government, not from personal or party favorites, but from statesmen of high public character, talent, experience, and elevated services; from statesmen who had earned public favor and could command public confidence. At present gross incapacity may be concealed under official forms, and ignorance silently escapes by shifting the labors upon more intelligent subordinates in office. The nation would be, on the other plan, better served, and the executive sustained by more masculine eloquence, as well as more liberal learning . . . there can be no danger that a free people will not be sufficiently wakeful over their rulers and their acts and opinions when they are known and avowed, or that they will not find representatives in Congress ready to oppose improper measures, or sound the alarm upon arbitrary encroachments. The real danger is when the influence of the rulers is at work in secret and assumes no definite shape; when it guides with silent and irresistible sway, and yet covers itself under the form of popular opinion or independent legislation; when it avows nothing and accomplishes everything.¹

One of the first objections to be met is that the Constitution makes no reference to the English system. It is generally admitted that the main features of our Federal Constitution were copied from the government of Great Britain, and though it has been contended with much force that it was based upon the colonial constitutions, which were themselves modelled upon the charters of the great British trading companies, the result is not much affected as far as the present inquiry is concerned. Now, the leading feature of the British constitution is the government of the cabinet in Parliament, so ably described by Mr. Bagehot, and as the framers of our Constitution did not introduce this feature it is assumed that they did not

¹ pp. 806 *et seq.*

intend to have it. Nearly all foreign observers maintain that it is wholly incompatible with our Constitution, and Mr. Bagehot draws an elaborate distinction of what he calls presidential from parliamentary forms, based entirely upon the absence of this cabinet government, and says triumphantly that while the Americans have many excellent things, this they have not and cannot have. On the other hand, Mr. Bryce says : —

These observations may suffice to show why the fathers of the Constitution did not adopt the English parliamentary or cabinet system. They could not adopt it because they did not know of its existence. They did not know of it because it was still immature, because Englishmen themselves had not understood it, because the recognized authorities did not mention it. Whether the fathers would have imitated the cabinet system, had it been proposed to them as a model, may be doubted. But as the idea never presented itself we cannot say that it was rejected, nor cite the course they took as an expression of their judgment against the system under which England and her colonies have so far prospered.¹

A determined opponent of any change in the powers of the two branches was the late Professor Freeman Snow of Harvard, and his objections are definitely stated in an article² replying to one in advocacy. Dr. Snow does not attempt to question the authority of the Senate report, but minimizes its importance.

In the report of the special committee having this subject in charge, there is nothing to indicate that the members of the Cabinet were expected to do anything more than appears upon the face of the bill. Yet Mr. Bradford, in discussing it, has assumed nothing less than a revolution in our methods of legislation. Instead of the mere "privilege to give their suggestions and advice in debate, by word of mouth," as proposed by the Pendleton committee, the members of the Cabinet are, in Mr. Bradford's interpretation of the bill, to take the initiative in preparing and introducing bills for the action of Congress. In other words, the initiative and conduct of the business of legislation

¹ "American Commonwealth," Vol. I, Chap. XXV., p. 279.

² *Annals of the American Academy of Political and Social Science*, July, 1892.

is to be transferred from the members of Congress to the officers of the executive department. This would be a new method of legislation, which might properly be entitled "irresponsible cabinet government."

The chairman of the committee, Hon. George H. Pendleton of Ohio, doubtless drew up the report, though after our usual fashion his individuality is carefully concealed. He had been advocating the change for a number of years, and had undoubtedly thought out many of its consequences, though he was not at all prepared to develop them. The statement that its advantages are so obvious and manifold as not to need discussion, shows that he knew how fatal that discussion would be to the assent of the rest of the committee. Nothing can be more certain than that the effects could not be limited to those referred to, or if they were, that the arrangement would soon come to an end either by positive repeal or by falling into disuse. The conflict of powers would begin at once, and could hardly fail to lead to what Dr. Snow calls a revolution, though it might be wholly within the lines of the Constitution.

While some bid England borrow from her daughter, other Americans conceive that the separation of the legislature from the executive has been carried too far in the United States, and suggest that it would be an improvement if the ministers of the President were permitted to appear in both houses of Congress to answer questions, perhaps even to join in debate. I have no space to discuss the merits of this proposal, but must observe that it might lead to changes more extensive than its advocates seem to contemplate. It is hard to say, when one begins to make alterations in an old house, how far one will be led on in rebuilding, and I doubt whether this change in the present American system, possibly in itself desirable, might not be found to involve a reconstruction large enough to put a new face upon several parts of that system.¹

What Mr. Bradford would seem to desire for the United States is responsible cabinet government; but as that cannot be had without a radical change of the Constitution, he proposes that Congress shall

¹ Bryce, "American Commonwealth," Chap. XXV., p. 284.

voluntarily transfer the conduct of legislation to the wholly irresponsible officers of the executive department.¹

When a person is said to be responsible, the question at once presents itself, To whom is he responsible? When Dr. Snow speaks of responsible cabinet government, he means, as is evident from the rest of his argument, a government responsible to Congress; and because the officers of the executive department are not responsible to Congress, he says that they are "wholly irresponsible."

Here is the turning-point of the whole question as regards the United States. Mr. Abbott Lawrence Lowell² assumes also that the object aimed at is responsible cabinet government, and reasons as follows:—

The essential characteristic of a parliamentary government consists in the fact that the Cabinet—a body comprising all those members of the executive department on whom the policy of the administration depends—can remain in office only so long as it receives the support of the legislature. The members of the Cabinet have seats in the legislature and they are expected to superintend its work and to prepare such bills as they think ought to be enacted. But it is not for the performance of these duties alone that they are responsible. They are liable to be turned out of office if the legislature disapproves of their conduct in matters purely administrative. The legislature is made familiar with the policy of the ministry in legislative matters by the bills it introduces, but it can also obtain as much information about matters of administration as it desires by means of questions addressed to the ministers. It is evident, therefore, that the supervision which the legislature exercises over the details of administration is limited only by the temper of the legislature itself, or, in fact, by the intelligence, energy, and strength of the opposition. The legislature has complete power of control over all matters, both legislative and executive, but so long as the Cabinet retains the support of the legislature all the powers of government are virtually intrusted to its care (p. 24).

This conclusion, like that of Dr. Snow, proceeds by ignoring the major premise,—the fundamental difference

¹ Snow, *op. cit.*

² "Essays on Government"—Cabinet Responsibility.

between the governments of Great Britain and the United States, which consists in this, that in the latter the executive is a president elected every four years by the majority of the whole nation; for the intervention of presidential electors has become a mere form, and the election by States, though it differs somewhat, does not differ essentially from a popular vote. The queen of Great Britain reigns by hereditary descent, and is dependent for her position neither upon Parliament nor the people. As an offset to this the Crown has been deprived of all but nominal power, though its influence is undoubtedly still considerable. The real executive, as Mr. Bagehot has clearly shown, is the ministry, which is in effect a committee of Parliament. When one ministry goes out, the leader of the opposition is invited by the queen to form a new ministry. If he thinks he can command a majority he invites certain other leading men to join him, which they will only do upon condition of his supporting them; so that if any one of them is defeated the whole ministry will resign. Every effort is therefore directed to maintaining the party majority, and how difficult this is is shown by comparison of the groups and the constantly changing ministries in France. It is a condition of unstable equilibrium. Our cabinet officers, on the other hand, are the direct appointees of the President, and so far from being irresponsible, they are jointly and severally, as well as absolutely, responsible to him. He can change one or all of them at his pleasure, subject only to the consent of the Senate, which has very rarely been, and under the circumstances herein proposed never would be, refused unless in very extreme cases. But the President is himself responsible to the nation, and therefore his Cabinet is so also. In other words, he appoints its members subject to his responsibility to the majority of the nation. The Cabinet is, therefore, irresponsible

only as regards Congress. It has its own separate responsibility to the people precisely as Congress has, but with this difference, that the constituents of the Cabinet are the whole nation, acting through the President, while the constituents of each congressman are only the voters of his own district, and of each senator only the members of his own State legislature. This fact of the separate and direct responsibility of both executive and legislature to the common arbiter and sovereign, the people, is of immense importance, and like nothing else in the world. From their responsibility to the President alone it follows that the members of the Cabinet need to stand in no fear of Congress, nor to resign in case of an adverse vote. If, indeed, the President felt that one or more members of the Cabinet had proved to be incompetent, he could, and probably would, change them at his pleasure; but if otherwise, he could uphold them against any adverse majority in one or both houses. The defeated member could either abandon the rejected measure under protest and appeal to the country, or could modify it, still under protest, till the majority would accept it, or could drop the subject, and contenting himself with existing legislation go on to something else till the verdict of the people was pronounced at the next election. But there would be no more necessity of his resigning than there is now. From the fact that both Congress and the executive have a separate and independent responsibility to the people, as also from the much wider and more numerous constituency of the executive, it would follow that Congress would be much less dominant and dictatorial in its relation to the executive than it is at present, or than is the British House of Commons, or the French Chamber of Deputies. Nobody doubts that members of Congress are sensitive enough to any manifestation of the will of their constituents. The trouble is that with the present methods of government by the lobby and

secret committees, there is no opportunity for the formation or the expression of public opinion. But if one of the President's lieutenants, felt by every part of the country to be the agent of the whole, were to stand up in open Congress to express his views and plans upon any public question, and these were discussed by the press of the whole country, itself anxious to conform to and express public opinion, members of Congress would be exceedingly careful about factious opposition in the face of such a power as that. So long as a secretary could maintain the conviction of his purity and elevation of character, even though his ability was not of the highest, he would be safe from bullying and sure of respectful treatment. It would be only trickery or dishonest collusion with private interest which would insure his speedy downfall.

Dr. Snow cannot see how the President represents the whole country any more than Congress. The simplest appeal to fact shows that the President excites equal interest in Maine and Louisiana, in Wisconsin and Florida, in Virginia and California. The Speaker and the chairman of Ways and Means are perhaps the most important members of the House. But they represent each precisely one three hundred and fifty-sixth part of the country, and the rest of it, except from the point of view of party politics, cares very little what either of them thinks or says.

But how can the President represent the country as a whole on any question which interests every part? Take, for instance, the question of free coinage of silver; the South is for it, the East against it, and the West divided. No one man can represent all these views.¹

The trouble is that Congress does represent them all separately, and engages in an internecine struggle by means of intrigue, log-rolling, and political tricks, as to which of them shall prevail. What is wanted is a mediator, whom

¹ *Op. cit.*

all look up to as their official representative, to prepare a scheme of compromise and adjustment of interests, accepted by all as if not what they want yet the best which under the circumstances they can expect to obtain for the present. A good illustration is to be found in the first English parliamentary reform.¹ The President and his Cabinet could do, if they had the opportunity, what Congress never will or can do, while on the contrary it is increasing sectional and class bitterness more and more every year.

Dr. Snow points out the weaknesses of the English system:—

The critics of our system of government have as a rule dwelt upon its defects only, leaving its advantages entirely out of view; and on the other hand, in comparing it with the English system, they have as carelessly extolled the excellencies of that system, ignoring its weaknesses. Now let us for once reverse this process and point out, first, some of the defects of cabinet government. The feature of their government which is causing most anxiety in the minds of many educated Englishmen is perhaps the unchecked power of the House of Commons, which has gradually "arrogated to itself the character of a constituent national convention to impose any changes in the national constitution it sees fit." Mr. Caleb Cushing once put in terse language this inherent weakness of the English form of government. He said: "Now the submergence of the power of the Crown in Parliament, and that of Parliament in the House of Commons, and the commitment of all these powers to transitory nominees of the House of Commons, are facts which combined have produced a result that government in England is at the mercy of every gust of popular passion, every storm of misdirected public opinion, every devious impulse of demagogic agitation—nothing corresponding to which exists in the United States."²

Granting for the sake of argument that there is no exaggeration in this language, is it not equally true here, except for the fact that the President is independent of Congress? Is not the fear of Congress here quite as great as that of Parliament in England? Is there any confidence that both houses will not be stampeded by any

¹ Cf. Chap. VI.

² *Op. cit.*

supposed gust of popular passion? Has any violent action in Great Britain surpassed that by which both houses of Congress unanimously and within twenty-four hours approved a message of President Cleveland which amounted to a declaration of war? or when, in March, 1898, in view of possible hostilities with Spain, Congress without a dissenting voice in either house placed fifty millions of dollars at the disposal of the President? The independent responsibility of the President to the nation is our greatest safeguard, and it will get its greatest value when enforced by open debate in Congress. We agree with Dr. Snow as to the fact and the danger of the unchecked and absolute power of the British House of Commons, particularly with the advent of democracy. But we maintain that the power of Congress, under present conditions, is greater and more dangerous than that of the House of Commons. It is true that the House of Commons makes and unmakes the ministry, and is not bound by any written constitution. But while the ministry exists the House leaves to it not only the executive power, but that which is the essential condition of such power, — the guidance and control of legislation; and, moreover, the House is kept in order by the potent fear of dissolution. The one force which holds the House of Commons in check is the presence of the executive ministry and their exclusive initiation of legislation. While this hold continues the ship of state rides safely at anchor. Loose it and she would drive speedily on the rocks. The House of Commons would follow the course and meet with the fate of a French Convention.

It is true again that our Congress does not create and cannot remove the Cabinet, which is appointed by the President, himself elected by the nation, and also that Congress is bound by our written Constitution. But as to the first point, Congress has much more than offset the difference by entirely excluding the executive from all

share or voice in legislation, and reducing it to be the blind instrument of any order which the legislature may choose to give. His only defence is in the negative veto, of which Mr. Bryce forcibly remarks that "it consists not in his getting what he wants, but, so far as it goes, in his preventing Congress from getting what it wants."¹ No doubt the President has great power if he can appeal to party motives, or will stoop to intrigue and the use of offices; but as he must do that in subjection to members of Congress, it only emphasizes his weakness. As to the second point, experience is rapidly showing that within the framework of the Constitution there is hardly any limit to the evil which legislative anarchy can set on foot. How far the Constitution itself is really a check we shall have presently to consider.

Another and the most prominent defect of cabinet government is the instability of the ministers. Cabinet government is the government of a party; and for its successful operation it must have at all times a majority at its back in Parliament. If it were possible to direct the current of public opinion into exactly two channels there would be but two parties, one of which would generally be in the ascendancy; but in practice this is found to be a very difficult thing to accomplish, and it becomes the more difficult as the right of suffrage is extended to the mass of the people, with their ever-varying interests. In the countries of continental Europe parties, if indeed they may be said to exist, are broken up into groups, no two or more of which ever act together for any considerable length of time; and ministries are, without a moment's notice, confronted at brief intervals with opposing majorities, and must give place to others, whose tenure of office is, however, equally unstable and ephemeral.

There is no other alternative; one of the two great parties must yield to any faction which becomes strong enough to hold the balance of power between them, or suffer the inevitable consequences — instability and impotence of government. "No such instability," says Judge Hare, "can well occur in the United States, where if a third party rendered ordinary legislation impracticable, with the view of obtaining some real or fancied benefit for a peculiar State or section, it would still be possible to vote the supplies; and the government

¹ "American Commonwealth," Chap. XXV., p. 285.

would proceed in its accustomed course under the guidance of the President, notwithstanding the discords which prevailed in Congress." ("Constitutional Law," I. 179.)¹

We should like to ask whether the necessity of party is any less apparent in our Congress? whether the power of groups or factions over legislation is less visible here under existing conditions? whether not only public legislation but administration are not constantly sacrificed to reconciling groups and private interests within the parties, the only difference being that the executive has no power of protest? or whether such groups interfere with voting supplies or with government proceeding on its accustomed course any more in Great Britain than they do here?

The instability of ministries is precisely the defect which our machinery offers the best means of obviating. Perhaps the best way to discuss Mr. Snow's argument will be to take a concrete case and trace its probable working; and the tariff, at once by its complexity and its universal national interest, offers a good example. Suppose that, when Congress meets, the Secretary of the Treasury, by invitation of the House of Representatives and in accordance with the Pendleton Bill, should appear and take his seat near the Speaker's desk. The first thing to be noted is, that it is not at all necessary that he should be a member of the House. He is simply an agent of the administration, having no vote but presenting the wants of the Treasury and the effect of the existing tariff upon the financial interests of the country. Observe, again, how different his position would be from that of appearing before a committee, say of Ways and Means. The committee is not a place for debate. It does not care to argue with the Secretary. With its inherent jealousy of the executive it does not care what he has to say. For form's sake it listens to him, perhaps asks him a few questions,

¹ Snow, *op. cit.*

and then dismisses him and conducts its deliberations and forms its decision upon motives which the country never sees or understands at all. But the House is the place for debate. Every word that the Secretary said there would be reported, and his language and bearing discussed in almost every newspaper in the United States.

When the Secretary arises in his place, it is safe to say the Speaker will recognize him without regard to party, greatly to the disgust of members who cannot get the same opportunity. He does not embark upon a radical reform of the tariff, but proposes a few changes of detail, among others for example free wool, and makes those a pretext for a discussion of the whole subject. If a private member had made the same proposal it would be referred with a hundred others to the appropriate committee. The author would be divorced from his measure, and the latter would disappear perhaps for months, and if ever heard from again it would be as a part of an elaborate bill, prepared by the committee upon motives and considerations of which the country would know nothing.

Dr. Snow would probably say that the Secretary's proposal would be referred in the same way. But he is a very different individual. In the course of his speech he would insist, respectfully but earnestly, upon the importance of immediate public discussion, and would close with submitting a resolution to that effect. Some members of his party, seeing the political capital to be made, would support the resolution. The opposition would at once see that with the Secretary's speech published all over the country it would be too dangerous to try to stifle it by reference to a committee, and that they had got to take the bull by the horns. They would be anxious as to the character of the debate. It would never do to let any blatant member who could catch the Speaker's eye damage the party and the cause by displaying his ignorance. They

would go into caucus to select their best man to conduct the debate, and in a general way the speakers to follow him. The House would be divided into two organized and disciplined bodies under their respective leaders, ready to join battle in a discussion of principle before the whole country looking on with the most intense interest. Is it not evident how the "advice and suggestions" of the Pendleton report might develop into something vastly more important, and that such are "the obvious advantages" which the author of that report pointed to but did not see fit to discuss?

We will suppose that while the regular business of the session was going on this discussion was kept up for two or three months. The country as a whole would learn more and come to more definite conclusions than from all the efforts of local writers and speakers, including members of Congress, in as many years, from which, indeed, it probably does not learn anything at all. There would be added the immense force of personality. Members would come before their constituents through their speeches and votes in a totally different light and have a chance of standing on their own feet, instead of being the mere nominees of a party convention. The whole country would begin to take sides with the Secretary and the President behind him on the one part and the leader of opposition and his followers on the other. The elections would begin to take on a wholly different character.

Suppose next that after a three months' debate a vote was taken and the Secretary's proposal defeated by a large majority. It would not be necessary for the Cabinet or even the Secretary to resign. The President might say to the latter in private, "You have done well. Now help on the business of the session with tact and prudence, and we will see what another year may bring forth." Or he might conclude that the Secretary was not up to his work, ask

for his resignation privately, and invite the member of the same party who had been most prominent and effective in the debate to take his place, and any member would gladly resign (reserving his chance of subsequent reelection when out of office) for a post of such distinction as the Cabinet would then offer.

The same analysis might be applied to the finances as a whole, or to any other department, — Foreign Affairs, the Navy, the Interior, or the Post-office. No secretary would resign now because Congress refused to comply with his recommendations in a report or in a hearing before a committee. Why should he do so any more because it refuses a personal request? If, indeed, he held his place by virtue of a congressional majority, as the English and French ministers do, then he must resign at the bidding of that majority; but he does not — he derives it from an authority totally independent of Congress, directly the President and indirectly the people. No German minister would think of resigning because of a defeat in the Parliament. He resigns only when the Emperor dismisses him. But the German Emperor derives his authority for life, in theory from God and in practice from a standing army. The President of the United States derives his for four years from the votes of the nation. That and not the relation to the legislature is the real difference between the two.

Mr. Lowell in the essay already referred to assumes that if the Cabinet are to have seats in Congress this implies parliamentary government, and that this again requires that the executive must resign at the bidding of the legislature and discusses the whole subject from this starting-point. He takes up first the hypothesis that the President shall himself have a seat in Congress, but this we do not care to discuss. The position of President of the United States — equal in moral grandeur and dignity

to any in the world — is far too important to admit of such conditions. That the chief executive head of seventy millions of people should be subjected to the promiscuous conflict of debate with members of the houses is not to be thought of.

But, in fact, no one proposes that the President shall be a responsible prime minister or have a seat in Congress. The advocates of a parliamentary government go no further than to suggest that the advisers of the President shall sit in Congress, and that they alone shall be responsible to it for their actions. Under such a system the President would remain in office for the four years of his term in any event, while the cabinet officers would retain their places only so long as Congress was willing to allow them to do so. The President would then be obliged to select his Cabinet from among the leaders of Congress, for otherwise the administration would be without strength, and in danger of being upset whenever the men who really commanded Congress should conclude that they wanted cabinet positions for themselves. But it is evident that cabinet officers, who knew that they could not be dismissed without the consent of Congress, and who were at the same time the leaders of Congress and able to control its action, would find it very easy to carry out their own policy of administration without much regard to the wishes of the President. They would be called upon, moreover, to explain and defend before Congress the policy of the government, and they could not do this unless that were really their own. They would make but a sorry piece of work in defending the acts of the President unless they really approved of those acts, and were willing to assume complete responsibility for them. They clearly could not shield themselves by pleading the orders of the President, because his orders would not be binding on Congress, and such a defence would not prevent Congress from turning the Cabinet out and insisting on a ministry which would fulfil its wishes. Of course the responsibility of the Cabinet to Congress would not make the President a figurehead at once. The tradition of the President's authority would probably enable him to influence politics for a long time; but as Congress became more and more conscious of its power, it would control more and more completely the acts of the administration. It would gradually force the cabinet officers to be strictly responsible to itself, and it would finally concentrate all powers, both legislative and executive, in its own hand. So long as Congress and the President were of the same political party the process would probably go on slowly; but it is clear that if a Congress of a party hostile to the President were elected, he would rapidly lose all control of the administration, which would pass into

the hands of his political opponents. Mr. Bagehot, while discussing the separation of the legislative and executive powers in this country and the exclusion of our cabinet officers from seats in Congress, remarks, "and to the effectual maintenance of such a separation, the exclusion of the President's ministers from the legislature is essential. If they are not excluded they become the executive; they eclipse the President himself. A legislative chamber is greedy and covetous; it acquires as much, it concedes as little, as possible. The passions of its members are its rulers; the lawmaking faculty, the most comprehensive of the imperial faculties, is its instrument; it will take the administration if it can take it. Tried by their own aims, the founders of the United States were wise in excluding the ministers from Congress."¹

Evidently these arguments both of Mr. Lowell and Mr. Bagehot turn upon the assumption that Congress could and would compel the Cabinet to resign at its pleasure, and the President to make up a Cabinet to suit itself. Our contention is that the separate election of the President by a constituency as large as that of the whole House or the whole Senate would furnish an amply sufficient resisting force; that while Congress would not dare to refuse to any Cabinet the current supplies for carrying on the government, disputed questions could be left in abeyance for the verdict of the elections; and that the President, with such a power of appeal to the country, could and would maintain a Cabinet to suit himself, at least till the people demanded a change. If Congress should encroach too much public opinion would throw its weight on the side of the executive, but on the side of Congress if the executive was unreasonable in its demands; and with moderate tact and discretion it is safe to say that the executive would not fare the worst in such a struggle. It must be always borne in mind that our government is in this respect absolutely unique, and that such an arbitrating force of public opinion exists nowhere else in the world. We hold that the exclusion of the Cabinet has

¹ Lowell, *op. cit.*, p. 27.

enabled Congress to do just what Mr. Bagehot points out and that the only hope of restoring the balance is to introduce them there.

It is always made an objection by those who are called upon to consider the subject of the Cabinet in Congress that it would reduce the President to insignificance. But that does not follow at all. Was Lincoln eclipsed either by Grant or Sherman, by Chase or Stanton? If a team of six or eight young and spirited horses was driven through the crowded streets of a city during a Fourth of July celebration, whatever admiration might be excited by their beauty and action, a full measure would be reserved for the quiet man on the box who held the reins. The selection of the Cabinet, the deciding of the collective policy, the sustaining of them separately against Congress, or replacing them if unequal to their work, the choice of their successors, and the appeal either implied or expressed to public opinion, would not only call for the highest qualities, but secure their appreciation by the country. Nor would the interest be at all diminished by the fact that the President, while looked to as the source of the responsibility of his Cabinet, himself stood apart from the arena of conflict; just as Lincoln in the popular mind overtopped the generals who did the work in the field. It may be said that men, whether members of the houses or not, would not accept positions where even if the Cabinet was not expelled as a whole by Congress, individuals might be summarily set aside and dismissed from public life, at least for the time, by the President. But the prize and reputation of success would be so great that there would be no lack of competitors even of the first class. When in time of war a forlorn hope is wanted for the storming of a fortress, even though it is certain that more than one-half of the assailants will be killed or mangled, there is always a plenty of volunteers.

Mr. Lowell's argument that the President would be obliged to choose his Cabinet from among the leaders of Congress, as any others would be upset by it, would fail entirely if it appeared that they could not be rejected by Congress, the President being left to select them where and among whom he pleased; and whether they would be without strength would depend upon the force of public opinion, which would promptly resent any attempt by Congress to bully the executive. If, as Mr. Lowell says, Congress "would gradually force the cabinet officers to be strictly responsible to itself and would finally concentrate all power, both legislative and executive, in its own hands," it may be asked why that body, which is certainly not modest in asserting its own claims, has never made any movement towards getting the Cabinet into such a position. The reason is that it feels instinctively what the real consequences of such a step would be.

After considering the position the President would occupy if we had a responsible ministry, one is naturally led to inquire what changes such a system of government would produce upon Congress. That body is now composed of two branches, each of which has not only a constitutional right to refuse to enact laws proposed by the other, but has no hesitation in actually exercising its authority. Mr. Bagehot, a strong advocate of parliamentary government, considers such a state of things exceedingly pernicious; while, on the other hand, the publicists of the last century and most Americans at the present day assert that it is very important, if not absolutely necessary, as a check upon popular impulse. Let us consider whether the existence of two really independent houses of Congress is possible in a parliamentary government. The Cabinet is to be responsible. Responsible to whom? To the two houses of Congress (p. 80).

Not at all; to the President and the country.

This is all very well so long as the houses are of one mind; but what will happen when they disagree?

Exactly what happens now, except that the Cabinet would take the place of that last extremity of absurdity and danger, — the committee of conference.

Suppose that the House of Representatives should continue to support the Cabinet while the Senate opposed it, and the Cabinet refused to resign. The Senate would then have but two courses open to it: either to hamper the policy of the administration in every possible way and attempt to force the hands of the Cabinet and the House, or to submit; and if it should submit, it would fall in prestige and gradually lose all voice in the control of the administration. When, in such a case, the majorities of the House of Representatives and of the Senate do not belong to radically different parties, a compromise may be arranged, it is true; but if this arrangement is really a compromise, and not a virtual surrender on the part of one of the houses, the Cabinet will be weak and its policy negative; or if it happens that the Cabinet is vigorous and composed of able men, it will play off each of the houses against the other and be in reality responsible to neither of them. A ministry cannot be responsible to two chambers (p. 31).

Perhaps not; but two chambers may be responsible to a ministry, and this might prove to be a means of settling what is here discussed and has proved to be a great difficulty of representative government,—the struggle for supremacy between two chambers as against each other.

In the long run, it must depend upon the support of the stronger one alone, and disregard the action of the weaker (p. 32).

These are all questions to be settled by the elections.

And this becomes more clear when we consider that one of the most important duties of a responsible ministry is to explain and defend its policy in the chambers, because the ministry cannot really fight its battles in both chambers; for the debates that take place in one cannot be repeated in the other, nor will a part of the debates take place in one and a part in the other. All the important discussions will tend to occur in the chamber which shows the most power, and the chamber in which the debates take place will have the most attraction for men of talent and ambition; and so the stronger chamber will grow stronger and the weaker will become weaker, until all authority is centred in the former¹ (p. 32).

All this reasoning depends upon whether the ministry derives its authority from one or both chambers, or from a power outside of both.

¹ Lowell, *op. cit.*

In a parliamentary government the power of dissolving the legislature is almost essential to the smooth working of the system, because a minister who feels that the people are on his side, when he loses the support of the House, cannot be made amenable to the latter. The ministry looks to the House for support, but in order that the system may work well they must both feel that their policy is in harmony with the will of their constituents, because these are the final judges of the policy of the government, and an election, whether it takes place upon a sudden dissolution or at the expiration of a fixed time, is an appeal to their judgment (p. 34).

We hold that our fixed terms would answer the same purpose without the uncertainty and the appearance of violence which attend a dissolution. The average duration of a British parliament has been stated at four to six years. Our biennial elections of members of Congress would give a note of warning and adjust the compass for the grand climacteric of the presidential year. One change which it is to be hoped might be brought about is that members should not be elected a year in advance. Again, the constituents cannot at present be the final judges of the policy of the government, because the government, meaning by that term the executive, never has, or at least brings forward, any policy. It is only Congress which, with its shifting groups and factions, offers anything which can be called by that name.

From this point of view it is evident which of the two branches of Congress would overshadow the other and become the centre of power. Every two years, according to the Constitution, the entire House of Representatives is elected, and there assembles at Washington a new House in sympathy with the opinions of the people (p. 35).

That is just what we deny, holding that it is in sympathy with the politicians who manage the party conventions.

If, therefore, we had a responsible ministry, the people in electing the House would pass judgment biennially upon the acts of the ministry. But only one-third of the Senate is renewed within the same period, so that this body is never a very accurate index of the opinions of its constituents. A reelection of a third of the senators could hardly be

looked upon as a verdict upon the acts of a responsible minister; and even if the Cabinet were given power to dissolve entirely both branches of Congress, the two houses would not stand upon an equality, because the election of the House of Representatives would indicate the opinion of the people, while the new Senate would represent only the States; and there can be no question that the will of the people, and not that of the States, would be the decisive matter. The Senate represents the people indirectly; but while the House represents their present wishes, the Senate may be said to represent their more deep-rooted and lasting opinions (p. 35).

We should amend this by saying that the Senate does not represent the people at all, but the State legislatures, a very different thing.

It is partly to this quality that the Senate owes its power and its usefulness; but in a parliamentary government an appeal to the people means an appeal to the present opinion of the people, for it can mean nothing else. The elections to the House of Representatives would be the answer to this appeal, and it is the House which would be clothed with the power of the people (p. 36).

Observe that it is not, as in European countries, the popular House alone which is affected by the voice of the people. It is the House and the executive, both and separately. If both were in agreement, the Senate could hardly fail to give way. If in disagreement, the Senate would go far towards what might be called the casting vote. Any alteration found necessary in the character of the Senate must be sought — a topic which will presently be considered — in alterations in the character of the legislatures which elect them. It may be remarked that if a ministry could pilot a measure through both houses it might be considered as expressing the mature judgment of the country. If they could not, and either house should attempt to embarrass the government by refusing current supplies, the members would be pretty certain to hear from their constituents.

I shall now boldly assume that the reader is convinced of the truth of all that has been said, and I shall lay it down as a foun-

dation for further discussion that, if a responsible ministry were introduced into our government the House of Representatives would acquire the powers of the House of Commons; that the Senate would occupy a position similar to that of the House of Lords,¹ and that the President would be reduced to such a condition that, except for the absence of a pedigree and of crown jewels, he might well be degraded to the condition of a king. I wish now to inquire what effect such a state of things would have upon the relations of the State and federal authorities² (p. 36).

This last subject will be taken up later, it being here merely remarked that the conditions would be entirely altered if the system of executive responsibility here advocated was extended to the States, where it is equally applicable, is just as much needed, and is much more easily attained.

Once more it may be said that our argument is all pure theory, with no demonstration of its correctness. Is it any more unreasonable than to assume that executive responsibility under our government, where it is vested in a single head elected separately by the people, must necessarily be developed in the same way as in European countries, where it takes the form of a committee practically elected by the legislature.

The witnesses thus far called have been students of political science and of the working of our institutions. We will now summon one of different authority. Hon. Thomas B. Reed has been a member of Congress for more than twenty years. He has developed the powers of the Speaker to the highest point which they have ever reached, and this does not offer the only evidence of his political sagacity. In a brief essay³ he has faced the question squarely, Should the cabinet officers have seats in Congress? And his answer is entitled to careful examination.

¹ It would indeed be a revolution in the government, if the power of the Senate was brought into subordination either to the House of Representatives or the President or to the people of the United States.

² Lowell, *op. cit.*

³ *Illustrated American*, July 31, 1897.

It was much easier to separate the judiciary from the legislature and from the executive than to separate the two latter from each other. As it is, the only legal connection between the executive and heads of departments and the legislature, between the administration and the Congress, is, on the one hand, by written communications stating plans and propositions, needs and requirements. On the other hand, Congress may ask the President and in some cases require, if not incompatible with the public service, of the heads of departments, information as to the public needs, with intent upon such facts to predicate legislation.

All other communications depend upon individual will and effort. The President may recommend, the heads of departments may report, and Congress may take no notice whatever of recommendation or report.

All communications in writing have their limitation arising out of the nature of things. They cannot go beyond the mind of the writer; they can only anticipate such objections as then occur, not all the objections which will occur. If you see a man and look into his face (particularly if the interview is in the sight of seventy millions of people) you put the case right, and you answer the objections he really has and not those you think he might have. Hence it is that though members of the Cabinet give frequent advice it has comparatively little power.

For this reason it has been frequently asked, Why do we not avail ourselves of the services of the heads of departments; why do we not give them seats on the floor of the House and the Senate, and the right to speak and contend in debate; the right to bring in bills and propose measures? Undoubtedly, it is said, such a course would give to these gentlemen greater power and influence, and the President would be able to call around him men of the highest standing, and even a seat in the Senate would seem small in comparison.

The essay contains many pregnant sentences, but none more so than this clause as to the Senate, to which we shall recur later. It furnishes a reason, more powerful than all other arguments, why neither Senate nor House will listen to such an idea.

On the other hand, if these heads of departments were men such as have been described, they would have ample powers to convince, and would add perceptibly to the grasp which both House and Senate would have on public questions. This at least would be a fair contention and, if it were all that was to be said, conclusive. But even a slight examination will show that, whatever else this new creation

might be, it would not be representative government, representative either of the States or of the people.

After weighing carefully every word of the essay we cannot see that Mr. Reed even tries to establish this negative. It can get a foothold only by ignoring the fact that the Cabinet, through the President, represents just as many of the people of the United States as the majority which rules the House, and of the States as the majority which rules the Senate.

Of course all these suggestions have, away down in our minds, a reference to the British system, a desire to get a responsible ministry, a set of men who do their work openly, take the responsibility and enjoy the glory, if glory there be. What those who want the Cabinet to help legislate desire is responsible government. But the heads of departments on the floor of the House would not give that at all.

That depends upon whether by responsible government we mean responsibility to Congress or to the President and the country.

It is true we have at present irresponsible government, so divided that nobody can tell who is to blame. But the fact that we have not yet solved our problem does not show that we shall not.

It is an immense admission from Mr. Speaker Reed that we have a problem to be solved.

What Woodrow Wilson has written about our system has some bitter truths in it. Government by committee and of two houses entirely independent of each other produces some fearful and wonderful results. The growth of the British system was out of circumstances at least as bad as ours, and we shall find some way to responsible government, though it does not seem to me it will be the British way.

Taking this whole paragraph, remembering what the circumstances of the British government were one hundred years ago, and noting that all that Mr. Reed has to say of them is that they were "at least as bad as ours," the eloquence of these six words can hardly be overrated.

As to the last clause we have tried to show that we do not need to copy the British way; that there is a way which, if based on the same principles, is original and thoroughly American.

Mr. Reed says that, while our fathers showed a great respect for the British constitution, they did not imitate it except in slight details. They certainly did not imitate this feature, for the good reason which we have given in a quotation from Mr. Bryce, that it did not exist. He then describes the situation of the British ministry, and continues:—

How different it would have to be with us. Our Cabinet is appointed by the President, dependent upon his will, and can be discharged by him at once. They are in office for four years if it so please the President. They cannot be reached for any wrong advice they might give the House or the Senate. They would share in great adventures without undergoing their perils. If they won, it would be well; if they lost, it would not be ill.

That may be true as regards responsibility to Congress. It would not necessarily be so as regards the President and the country.

Men so situated would have but little influence save for one thing, and that would give them great influence. They would sit in their seats with all the patronage of all the departments, a mighty power, as unjust in its exercise, as monstrous in its details, as the briberies of Walpole. Civil service reform may be leavening the loaf, but the recent increase of the population of Washington shows that that loaf is not for our next meal.

From which it appears that Mr. Speaker Reed does not estimate very highly the results of civil service reform. Our contention is that responsibility of the Cabinet to the President and the country would be the most powerful possible instrument for completing that reform. Dr. Snow says in the article referred to:—

Nor is it to be assumed because England has suppressed the spoils system, that only responsible government is capable of accomplishing

this task; it is the argument "*post hoc propter hoc*" and really proves nothing.¹

The reader who has followed what has been said on the subject² will judge of the correctness of this assertion. Cabinet responsibility in the American form would be even better fitted for the work. To return to Mr. Reed: —

Another point of difficulty is the Senate, which, under our system, represents the State. How could cabinet officers be there? Not to vote, certainly, for that would very much disturb the plan. It certainly would not be needful to have them there to make remarks.

We should say that if there is one place where remarks in the interest of the whole country and of the administration of the government are needed, that place is the United States Senate.

The senators are elected for six years, and all that was predicted of the great power of the body when it was created has become more than true.

So much more that, if it is not to acquire complete control of the whole government, there will be needed the whole strength of the executive, exerted in a conflict of debate before the whole country.

From the Senate of the United States there is no appeal to the people except that long and weary appeal to that conjunction of effort and luck which sometimes changes a majority of both houses and the executive as well.

That is true enough under existing circumstances, but the Senate is renewed by thirds every two years, and if a decided conflict arose between that body and the executive, in which each side had an equal opportunity of putting its case before the country, and if a strong tide of public opinion arose through the country in favor of the latter, a by no means improbable event, the Senate could

¹ Annals of the American Academy, *loc. cit.*

² See Chap. XIX.

be brought to terms much more easily than the House of Lords in England.

Another difference between us and those we think of copying might as well be taken into account. In this country, more than anywhere else, a member represents his district. His chance for a public career is just there. If he fails to suit his district he cannot go elsewhere, no matter how great and famous he is.

We have argued¹ that this restriction is merely a consequence of the way in which memberships are filled by local caucus nominations. If candidates were selected at the top instead of at the bottom, it might easily be done away with as to single States and conceivably as to the whole United States.

Even if it were proposed that the President should appoint members of the House and Senate as his cabinet officers or heads of departments, there would be the gravest objections.

That is not proposed unless they resign their memberships as they do now.

They would be amenable to him and to home influences and not to the House, or the Senate, or the people, unless some method of appeal to the people could be devised. Such an appeal would be impossible unless the whole instrument of government were changed.

Are there not popular elections for the House every two years, for the President every four, and for one-third of the Senate by the legislatures every two years? Surely they would afford sufficient notice for a change of cabinet or of policy by the President on one side or by Congress on the other.

Not only would the Congress suffer by this proposed change, but the executive would also. There is to-day no more severely worked man than any United States head of department, except probably the Secretary of War. If the department head had to spend his days in the House or Senate and meet all comers and answer all questions,

¹ See Chap. XVIII.

for the question system of England would have birth here at once, he would be utterly unable to do his department work except by the aid of a trained body of public servants, such as we do not have now and are unlikely to have until the civil service stands upon a much more satisfactory basis than it does to-day.

The reply to this has already been given in the Senate report; we only add that when the cabinet officers could speak for themselves, the necessity of such a body of trained servants would involve its immediate establishment.

CHAPTER XXXI

EXECUTIVE RESPONSIBILITY (*Continued*)

IN the last chapter were discussed the objections in detail to the introduction of the Cabinet into Congress. We will now touch upon those of principle, which may be described as turning upon the diffusion or concentration of power. The latter, be it again observed, is quite different from centralization. The government of France has always been centralized in Paris. Government in the United States is not only divided between the Federation and the States but between these and the towns and cities, and great concentration of power in each of these is perfectly consistent with a large degree of local independence. In fact, it may be shown that it is the want of concentration of power in the States which is leading us with rapid strides to centralization.

Dr. Freeman Snow¹ has appeared as the advocate of diffusion, and his arguments embody the general position on that side.

There are doubtless countries in which democracy would be out of the question, as there are others in which absolute monarchy would be not only difficult but quite impossible. Yet theorists continue to discuss the question as if it were possible to choose any form of government at will.

That is no doubt true at any given time, but is not so evident as regards long periods. As an extreme illustration our position is this, that if by any means the Eng-

¹ "A Defence of Congressional Government," American Historical Association Papers, Vol. IV., 1890.

lish parliamentary system could be steadily maintained in Turkey, with a firm preservation of external and internal peace, in five centuries the government of Turkey would be as free and enlightened and the people as orderly and law-abiding as those of Great Britain now are, and that if the methods of Turkey were adopted in this country, even though so administered that for the first fifty years no very serious change was apparent in the character and conditions of the people, yet in five centuries the population of the United States would be little better off than is now that of Turkey.

There is, speaking historically, good ground for believing that whenever the mass of the people of a state acquire a certain degree of intelligence they will invariably attempt to make their will felt in the political affairs of the state, and though for a time repressed by military despotism this must prevail in the end.¹

But whether this will result in a mere alternation of violence and repression, as we have seen in France for most of a century, depends upon the machinery and the methods through which the popular will is applied.

As pure democracy is impossible in states of large area, it becomes necessary for the people to express their will through representatives; and they may do so in very different ways.¹

A few pages later he says:—

The aim of popular government should be not how best to govern the people, but how best to teach them to govern themselves. To that end the people should take as large a part as possible in the work of government, that is to say, in legislation, for democracy means a government of law.¹

Why does democracy mean a government of law any more than of administration? The reply to the first proposition seems almost too obvious to need discussion, yet it lies at the very root of the whole matter; namely,

¹ Snow, *op. cit.*

that it is impossible for the people to govern themselves. Take the crowds of a great city, those that flock to the theatres for some variety in their monotonous lives, those that fill the factories and workshops and the thousand daily rounds of life; how is it possible that they can ever have any effective ideas either as to the details or the principles of government? Yet they are not bad people, but have on the whole a lively sense of right and wrong. Almost the first reflection suggested is, how defenceless they are! How completely at the mercy of selfish interests which can combine together against those who cannot combine! The most obvious question is the one of the most immediate practical importance in the United States. How can the many be protected against the few? And as an immediate consequence, supposing the many to get an idea, rightly or wrongly, that they are oppressed by the few, how are they to be restrained from outbreaks of violence from which they are the worst sufferers, and which if continued are the inevitable precursors of military despotism? Dr. Snow himself would not maintain that seventy millions of people acting in a mass could either make laws or execute them. And whether they delegate their power to five men or five hundred men the principle is the same.

Bagehot seems to hope that the mass of Englishmen will always remain in a state of respectful ignorance, merely indicating, now and then, which of the best and wisest statesmen of England they wish to have as rulers. It is needless to say that this is not a picture of democracy.¹

Why not? Is democracy to choose the worst and most foolish statesmen? For it must choose them of some kind, unless we propose to give up representative institutions and have the people of the United States do business in mass meeting. If in the above passage in place of the

¹ *Ibid.*

words 'respectful ignorance' we substitute the words 'enlightened independence' there seems to be nothing to which the most ardent advocate of popular government — we hesitate to trespass upon Dr. Snow's definition of democracy — need object.

Following the idea that the people must have representatives, Dr. Snow arrives at the conclusion, almost universally accepted in this country, that the legislature is really the government.

Legislation calls for deliberation and discussion, in which the interests of every part of the country are represented; and therefore "it shows the necessity," says Chancellor Kent, "of a free, full, and perfect representation of the people in the body intrusted with the legislative power." But how can these ends be attained if the legislative body is under the immediate direction of the executive power, which exercises an authority out of all proportion to that of mere legislators?¹

Is there no medium between this and the entire exclusion of the executive — which in the United States directly represents the people and the whole people just as much as the legislature — from all voice in its deliberations?

In a popular government legislation should be, within the powers of the legislators, free from extrinsic authority and restraint.¹

Here is the pivot upon which the whole question is supposed to turn. In a free government, the legislature being assumed to be the same thing as the people, it is claimed that every member must have the right to ask for whatever legislation he wants, and whether it shall be granted or not must be settled wholly within the legislative body, with no limitation except by the Constitution. We have seen to what confusion and anarchy such a system leads. In the order of society it is necessary that every individual should submit to some restrictions. Nobody is free to do what he likes, and the freest government allows only such

¹ Snow, *op. cit.*

liberty as is consistent with the general welfare. The welfare, even the existence, of society requires that some check shall be put upon promiscuous demands for legislation. The only possible restraint must come from the executive. The vital question is whether that executive shall be an arbitrary despot, a committee of the legislature, or a separately elected and direct representative of the whole people.

Administration is of a different order. "In the execution of the laws," says Kent, "no discretion is submitted to the executive officer. It is not for him to deliberate and decide upon the wisdom or expediency of the law." Here authority and discipline are proper and necessary; to obtain efficiency the responsibility of administration should be concentrated as much as possible.¹

Is it not just as necessary for efficiency that the laws shall be so framed that they can be administered; that they are not contradictory, impracticable, or dangerous; and how can this be assured if they are left wholly to the discretion of a legislature which is entirely irresponsible for administration? In all private enterprises the executive is consulted first of all. What would be thought of a great railroad company in which the general manager was not expected "to deliberate and decide upon the wisdom or expediency of the regulations"; in which these were all made by the directors, the general manager having nothing to do but to carry them out? It may be said that the executive officials may appear and give advice to the committees, which might perhaps answer if the committees were actuated by a single desire to promote the public interest, but we know that they are under pressure from local and private interests to which they feel their responsibility much more than they do that to the public at large.

In absolute monarchy the power to make laws and to execute them resides in the same person. What is distinctive of democracy is that

¹ *Ibid.*

the people make laws for their own government, and the executive is merely the servant of the people to carry out their will as expressed in the laws.¹

Observe that the word 'legislature' has wholly disappeared and 'people' been substituted as identical. If there is one complaint in politics, it is that the legislatures do not represent the people but only the caucus politicians, the reasons for which we have already given.²

To just the extent that you take legislation from the control of the people [legislature?] and place it in the hands of a powerful executive, though that executive is nominally dependent upon the people, to that extent do you depart from the principles of popular government and approach those of personal government or absolute monarchy. "Unitarianism," says Mr. Dicey, "means the concentration of the strength of the state in the hands of one visible sovereign power, be that power parliament or *tsar*."¹

Precisely, and it is Parliament, that is to say the legislature, in whose hands we have made the concentration. It is not proposed to put legislation in the hands of a powerful executive, but to authorize an agent, really and not nominally dependent upon the people, to have the guidance of legislation, under such order and system as will admit of its being done publicly and in sight of the people, so that the latter may understand both the arguments and the men, instead of having the work done in the secrecy of committee rooms with no personal responsibility of any kind.

It is objected that such narrowing of the field of legislation would prevent the consideration and passage of many laws for the public good as well as for reasonable private advantage, and that may be true to some extent. It may well be replied, however, that excess is now the prominent characteristic of lawmaking. The life of a nation is long. Even if only one grievance is taken up at a time, all other

¹ Snow, *op. cit.*

² See Chaps. XVIII., XIX.

public affairs being allowed to flow on in their accustomed channels, great and varied reforms may be accomplished within a century; and the delay is well compensated by the absence of that uncertainty and fear of change which paralyze industry and to a large extent all social conditions. An agency for preventing is quite as much needed as one for promoting legislation, particularly if it is so adjusted as to weigh wisely and impartially the relative merits of the many schemes proposed.

The sentence last quoted from Mr. Dicey also includes an important problem. Any proposal to concentrate power in a single executive head is met with a charge of seeking monarchy or despotism. The writer of this work is often reproached with being a disciple of Carlyle. But Carlyle's idea was of a heaven-born genius forcing his way to the top and compelling a nation to conform to his will. Surely, that is not the same thing as advocating selection by the people of an agent to govern in their interest and according to their will, and held in control by a watchful legislature informing the people how he does his work and whether they had better continue to employ him or replace him with somebody else. Observe that the object is not to give power but to obtain efficiency and responsibility; efficiency, by the action of a single head transmitting its force through subordinates to any needed extent, and responsibility, by concentrating all the nerves of administration at a single point where a white light can be turned upon it in the full view of a whole people. Mr. Dicey's alternative is between giving the whole strength of the state either to a parliament or a tsar. The former is what we do now, except for some wholly inadequate negative checks. Why need either be done, if there is a suitable division of power between the two branches? That can never be arrived at by the physical isolation of the persons composing each, which, under our conditions,

must result in the supremacy of the legislature. It can only be obtained by physical contact in which each branch can contend openly for its share of power before the common arbiter, the people.

We hear often of the want of order and efficiency in legislation, of the "chaotic condition of the congressional mob," etc. But we are not told how irresponsible cabinet officers, by merely having seats in the houses, would be able to bring order out of chaos, and make of the "congressional mob" a disciplined and efficient body.¹

Cabinet officers, not irresponsible, but responsible to the people, would do this by pointing out in public debate on what ground the voters should elect or reject candidates for either house.

It is hardly supposable that congressmen would voluntarily abdicate their power over legislation in favor of the executive department.¹

They would do exactly what the people ordered them to do, after hearing a public statement of the case by both sides, — a statement which they now never hear at all.

Dr. Snow is disturbed because Mr. Bagehot and Mr. Bryce both insist upon the necessity of leaders.

Mr. Bryce thinks that "like other crowds a legislature must be led and ruled." And he has formulated a theory which he believes to be "the essence of free or popular government and the justification for vesting power in numbers." "Every question that arises in the conduct of government," he asserts, "is either a question of ends or a question of means." And as the "masses are better judges of what will conduce to their happiness than are the classes placed above them, they must be allowed to determine ends." But assuming the end to be given, they—the masses—should leave to their leaders—the trained statesmen—the choice of means. The defect in this theory is, that it depends for its successful operation upon the continued "deference of the multitude for the classes placed above them . . . upon the principle of *noblesse oblige*," a principle, by the way, derived from feudal monarchy which has no existence in the United States, and which ought to be considered a misfortune in any free country.¹

¹ Snow, *op. cit.*

We cannot see what deference has to do with the choice of an agent for special work. An association of men wish to erect a building and employ an architect. It is not from deference, but because they think he knows and can do such work better than themselves. If he is satisfactory, they may employ him again; if not, they leave him for somebody else. A physician has a large practice, and men and women trust the care of their health implicitly to him, not from deference, but from confidence in his professional skill. Government is special work, just as much as that of the carpenter and the druggist; and that democracy will be governed best which knows enough to intrust its public affairs to trained and competent men. The difficulty of course is in selecting the men. But that can be better done through single individuals, subjected to some public test, than through bodies of fifty to five hundred men not known to possess any special fitness or subjected to any test whatever, except that of general good character.

Again, what are ends and what means in the intricate questions of government? Are ends whatever the masses believe "will conduce to their happiness"? or are they only "broad and simple issues," as Mr. Bryce intimates in another passage of his book? Who is to draw the line beyond which the people shall not interfere in politics?¹

We should answer this question, which is not without force, by saying that the masses should have the opportunity of selecting the one or more statesmen who can portray most to their satisfaction the ends to which government should be directed, and then trust them with the choice of means, subject to constant demonstration that the means are conducive to the ends.

Mr. Bryce has made a step in advance of Mr. Bagehot, in trusting the people to determine ends, whatever they may be; why not go one step further and trust them to determine all questions of policy? If

¹ *Ibid.*

the people reason about all questions of government, they will be more likely to have intelligent opinions upon questions which especially touch their own welfare : the blind aspirations which are dangerous will yield to reason.¹

The people cannot determine questions of policy, even if they were able to understand them, because they cannot come to an agreement. One might as well ask them to agree about the treatment of disease without going to a doctor ; or apply the old saying that a man who is his own lawyer has a fool for a client. And the same thing is quite as true of a legislature. We might illustrate this by some of the burning questions of the day, — tariff, currency, etc., — were it not that attention would at once be diverted from the treatment of the questions to the questions themselves, each disputant thinking that if the people were rightly informed, they would decide in accordance with his views. The only way of arriving at any practical result is to take up the plan proposed by the head of a department of the government for the time being. If, after thorough discussion, he cannot make that plan acceptable, when yet some settlement must be had, he will have to make way for somebody else, not at the bidding of Congress, but at that of the President or the country.

A considerable number of Americans, observing the grave political evils present in the nation, are beginning to look upon them as inherent in our form of government, and to see in the American Constitution, if not a total failure to meet the wants of enlightened democracy, at least a very inefficient and inadequate form of government.¹

We regard these evils neither as inherent in our form of government nor chargeable to the Constitution, but as resulting from the grasping ambition of Congress, which aims to assert its rule over both the other branches in

¹ Snow, *op. cit.*

behalf of its party majority for the time being, however that majority may be made up; and we believe that the evils may be corrected without any change in the Constitution, by restoring the balance of power between the branches. The reasoning of Dr. Snow and those who agree with him seems to be, that we must shut our eyes to the evils, never discuss them or inquire into their causes, for fear of casting reflections on the Constitution.

A cabinet government, under the most favorable conditions, will bring to the front the best leaders of the party; but it does not elevate the average aptitude for leadership. It develops leaders at the expense of the rank and file.¹

Which sounds very much like saying that to have a general manager of a railroad would develop men suited to the position, but would injure the corresponding qualities in conductors and engineers; that the discipline of a regiment produces good colonels but at the cost of captains and lieutenants, and that the way to get the best average ability is to have nothing but privates.

Is it inconceivable, indeed, that Mr. Bagehot's "unstable equilibrium" should one day be disturbed, and that the public in their search for leaders should put into the hands of "demagogues" the supreme power of the state,—and a supreme power upon which there is no check? After Mr. Gladstone why not John Smith, the socialist?²

That is not only conceivable, but certain to happen,² under any system which tries to suppress leaders. The people will have them in any event. The only choice open is whether they will be cheated into accepting "demagogues," or will select those whom they have found by severe and public tests to be sincerely devoted to their welfare and highest interests.

¹ *Ibid.*

² In fact, it is happening at this moment. Compare what is said in the next chapter as to the State governments.

They [such Americans] are frightened at the turmoil of democracy in America, and believe that our only safety lies in subjecting the multitude to the guidance of authoritative leaders.¹

So far from that, we are only frightened at the anarchy and impotence of Congress, and look for safety in submitting that body to authoritative leaders, through whom the multitude can hold it in control.

That this remedy would correct the faults of our government is extremely doubtful, and we should run the risk of destroying the safeguards which have cost a deal of pains to establish. And we shall find, after all, the vital forces of democracy in America to consist, not in organized parties, not in obedience to leaders, or in parliamentary discipline, but rather in the capacity of the people for self-government,—though it be not the most perfect kind,—and especially in their local bodies: the State, the county, and the town.¹

As it is precisely in the three things first named that we hold the vital forces of democracy to consist, we are at a loss to see how their capacity for self-government can be displayed in any other way.

Let it not be implied that, in defending the form of the American Constitution, the writer of this essay is blind to the very serious political evils which exist in the government. What is insisted upon is that the fault is not in the Constitution, but rather in the vicious procedure under it.¹

That is precisely the proposition which the whole of this book is written to maintain.

Now the remedy is to be sought, not in changing the institutions but in changing the spirit which gives them vitality.¹

Again we are in hearty accord.

If the people, and particularly the younger generation, once come to see clearly the source of the bulk of our political evils, they will understand that their reform is a comparatively simple matter, and lies wholly within their reach.¹

We have striven to point out the source of these evils. What other there may be within the framework of our

¹ Snow, *op. cit.*

institutions we have never seen indicated in any practical form, unless it is in the apathy and negligence, the perversity and wrong-headedness, and the incapacity of the mass of the people. If the cause lies there, the remedy is beyond hope.

If we would have honest and efficient legislation, we must take from legislators the usurped functions they have come to exercise in controlling executive patronage in their respective States and districts. Let the people send representatives to Washington for the purpose of making laws and nothing else, and we shall find that congressmen will not only be able to give us more intelligent legislation, but they will find ways of reforming the methods of procedure.¹

We should be very glad to hear by what process it may be expected that these desirable results will be obtained.

The President may advise, but it would be contrary to the principle of the separation of powers for him to use executive influence in the field of legislation. Why is it taken for granted that no one but the President understands the needs of the country or what laws to make? Except as to the details of administration, legislators, representing all parts of the country, ought to understand the questions requiring legislation better than the President.¹

Nothing of what is here intimated is proposed at all. The Cabinet are supposed to put into shape, with the President's approval, whatever policy the majority of the houses may decide upon, provided the former shall feel, after full discussion, that such policy meets with the approval of the country; or to resist it—if they come to the contrary conclusion—till it is tested by the elections; while an executive staff directed by one mind can do this better than 480 minds without any guidance and under no administrative responsibility whatever. In fact, the main object of executive responsibility is to arrive at some policy. A legislature left to itself, and the truth is painfully illustrated by Congress, never has any policy at all. It is borne hither and thither like the sands on the sea-

¹ *Ibid.*

shore. A responsible executive would be able to guide the wishes both of Congress and the country into some definite channel. The helmsman who steers the ship does not regulate the wind. He only takes advantage of it to guide the vessel to the haven where she would be.

In regard to subjects about which the executive can from his position give needed information, there ought to be no great difficulty. One trouble has been, perhaps, that hitherto the executive department has been too secret in its working. If its proceedings were made more public,—some method of publicity should be provided by law,—there would be found to be no great principle involved that every statesman ought not to understand sufficiently for all purposes of legislation.¹

It is just such publicity which we understand to be aimed at in the Senate report quoted in the last chapter, and we have never seen any other feasible proposal for arriving at it.

If it be true that Congress is really incompetent to make the necessary laws—not to say the wisest—then we ought to acknowledge at once that the experiment of popular government in the United States is a failure; nor will the remedy be found in transferring the powers of Congress to the executive.¹

If it can be shown that the incompetency of Congress results from its vicious and chaotic methods of procedure, which can be remedied by introducing some reasonable order and system, why does it imply the failure of popular government? Nor is it proposed to transfer the powers of Congress to the executive, but only to separate the powers properly belonging to each, in place of the present absorption of a wholly undue share by Congress.

Suppose we try for a moment to analyze the difference between the English and American systems of government, and we will take Dr. Snow's description.

At the present time there are for this purpose [government by representatives] two important methods on trial; namely, the Ameri-

¹ Snow, *op. cit.*

can and the English systems of government. In the English system the government of the state, in all its breadth and details from foundation up, is intrusted to the majority of the people to be changed or modified at pleasure. In the American system, on the other hand, a limit is set to the power of the majority by establishing certain fundamental laws which can be changed only by a more general assent of the people and after the most mature deliberation.

It seems to be admitted in England that the whole power of government has become centred in the House of Commons; that the House of Lords has nothing more than a suspensive veto and cannot permanently resist anything upon which the Commons are determined; that the Crown can exert nothing more than an indirect, and in substance a moral, influence; and that the ministry being created by the House of Commons is only the instrument of its will. The fear is that with universal suffrage the House may use its power for the destruction of the old institutions and traditions, and enter upon a path of social danger if not revolution. The protection against this in the past, and it has remained nearly if not quite unbroken up to this time, is the presence of the ministry in the House. They represent the administration, that is, the whole executive government of the country, and are responsible for it, which cannot be said of any member nor any number of members of the House. They alone can say with authority what legislation is needed for carrying on the government and what should be rejected as prejudicial to it. By virtue of this position they have acquired a right of initiative, complete as regards public affairs and very extensive in relation to those which are private. Practically no business can be introduced to which they object, or has much chance if they do not actively approve, and though a dissatisfied majority can turn them out of office, yet by their power of dissolution, which is much dreaded by the House, they can defend themselves against arbitrary dismissal.

One fact, however, remains to be taken into account, — that if the majority of voters favor a certain line of policy and elect a majority of the House for that purpose, the ministry must yield. They may represent in the strongest manner that the public safety is in danger, but if the House is resolute, they must submit, or make way for others who will. Now there are two elements wanting which are available in a danger like this. The ministry does not represent the country as a whole, and it does not identify the government in the public imagination with any person. The House of Commons consists of 670 members. It does not, therefore, represent a majority of the voters, but 670 separate majorities. Added together, they may, indeed, make a majority of the whole, but they are not so added. All sorts of considerations, personal, local, and party, may cause their decision to vary from what it would be collectively. Orders transmitted from a central group of party managers may affect the politics of districts very differently from what might take place with a whole nation. The larger the area included, the more are eliminated the disturbing elements of private interest and the nearer is the approach to the inherent elements of human nature. We have maintained that the evidence shows them on the whole and in the great majority to be good rather than bad. At any rate it is the court of final appeal before we resort to the brute force which shall carry the world back to its original barbarism.

Again, the English ministry does not represent a person but a group of persons. Loyalty to the Crown is an immense force in England, but it only very slightly affects the government. Conservative ministries and radical ministries may come and go and vast social changes be introduced, without involving or making use of the personal feeling of her subjects towards the queen. Mr. Gladstone at the height of his power was no doubt an object of great

interest and popularity throughout the kingdom. But he was still only one of the ministry and was obliged to shape his policy to suit his colleagues as well as the majority of the House; and was therefore obliged to waive the singleness of purpose and directness of methods which would have attracted or repelled the mass of public opinion. The voters, again, could only support him through the local members of their party. A man who felt himself directly responsible to the great body of public opinion, and that public opinion informed and guided by criticism of his acts and policy in the legislature, would hold a different position. It seems to us that these are two immensely important elements, which with all its merits are wanting to the British government in its struggle with the advancing tide of democracy.

If we turn to the United States the situation is exactly reversed. The apex of the whole system is a single executive head representing and appealing to seventy millions of people, and at the same time embodying the whole administration of the government. And we have shown¹ reasons for thinking that as an institution it has worked in practice extremely well. The Civil War showed that loyalty to the Union is fully as strong a force as loyalty to the Crown in Great Britain, and the attitude of the South since that time, after all that they had suffered, illustrates its power as a conciliating force. The President for the time being embodies this loyalty. Parties may abuse and newspapers criticise, but with the immense multitude he is looked up to as the President with respect and even affection. It may be said that loyalty to a bad President may cause more evil than the same feeling towards a good one can prevent or remedy, and this is certainly true. The safeguard is in providing that candidates shall not be selected by party intrigues in a nominating convention,

¹ See Chap. XVI.

nor yet in moments of excitement through glittering phrases of rhetoric; but by rigid tests of character and ability, in public conflicts of debate, of organized attack and defence, applied both to legislation and administration and extended over a series of years. Mr. Lowell, in the essay already quoted, takes exception to the view presented in this work and by Professor Woodrow Wilson as to the absorption of power by Congress.

A stranger, who knew nothing of America except what he could hear during a presidential campaign, would readily believe that the President held the only federal office of any importance. This results in part from the habit of making the candidate for that office the standard-bearer in the fight, but it comes also from the fact that the President not only wields the executive power, but has also a decided control over legislation (p. 55).

But this control is not only spasmodic and irregular, but exercised in secret. The fear which Congress undoubtedly has of the President as representing public opinion is distorted because it has no means of gauging that public opinion. When the President is of the same party as the houses a basis for action is sought in intrigue and negotiation; when of the opposite party in an attitude of dogged obstinacy and defiance; while in either case public opinion, baffled and worried and without any available guide, is wholly at a loss on which side to throw its weight. The greatest danger consists in the fact that either branch may undertake any assumption of power in total ignorance of how far it can rely upon the support of the country. Nor is the supposed grasp of power by Congress at all inconsistent with the existence of very great and very dangerous power in the executive. Being himself, as well as in the whole administrative organization behind him, completely out of sight of the people and beyond effective inquiry or criticism by Congress, except through an investigating committee, he may — not merely

through criminal intent but in sheer wrong-headedness — carry out a policy entirely opposed to the wishes and welfare of the people. More than this, a few resolute and ambitious subordinates, who can establish a mental ascendancy over the President, may bring great injury and disaster upon the country. For example, while Congress has the power to declare war, the President may easily bring matters to such a pass that Congress may be unable to resist the impetus of a few members who are always eager for it; while the President may himself be only a tool in the hands of other officials, none the less powerful that they work in secret.

This, then, is our disadvantage as the other is our advantage in comparison with the British system, the total disconnection of legislation and administration and the failure of adaptation to each other under the pressure of public opinion. It is for this reason that, while the power of Congress over the executive is technically much less than that of the House of Commons, it is in practice much more dangerous and attended with more threatening consequences.

In the absence of the mutual check furnished by the two branches through the conflict of public debate before the country, the necessary control is assumed to be furnished by the Constitution. Dr. Snow quotes Sir Henry Maine, Mr. Dicey, and Mr. Bryce as expressing regret that there is not some such fixed restraining power in Great Britain, and indeed such a feeling appears to be more or less widespread among Englishmen. It is important, therefore, to consider how far the Constitution can be relied upon for security in this direction. The great expounders, Marshall, Story, and Kent, may be said to develop what it was intended to be and what its language may properly be construed to mean. They could not foresee, and did not attempt to discuss, the tests to

which we have already seen it exposed and which must with every decade become still more severe. It is no longer safe to rely upon the intentions of the framers. It is a matter of life and death for each generation to study how far these prove to be in conformity with the facts.

The most astonishing thing to foreign statesmen is not that the people should profess to set up limits to the power of their own representatives, for this has been done in European constitutions, but that they should keep them, and allow the courts to refuse to enforce the acts of their representatives when they overstep them (p. 41). The Supreme Court of the United States could never have acquired its power of deciding a statute unconstitutional in any other country, at least in any other than an Anglo-Saxon country, and this would have been true even if the Constitution had been copied word by word.¹

It may well be asked how long this will continue to be a distinctly Anglo-Saxon country, and whether the Anglo-Saxon element is to raise the other elements to its level or be dragged down to theirs.

In reality a constitution can retain its force only so long as the people care for it more than they care to effect any immediate object. When the people make up their minds that they would rather amend the Constitution than fail to effect some desired object, it becomes certain that the Constitution will be amended, and if this happens often the fate of the Constitution is sealed.²

In other words, instead of trusting to the Constitution to keep the government in order, we have got to look to the people, not only for that, but to see that the Constitution itself is maintained.

It will hardly be denied that Mr. Bryce has brought to our affairs an earnest and impartial spirit of inquiry. His conclusions, therefore, are worth attention.

It will at once be asked, How can any constitution be truly rigid? Growth and decay are the necessary conditions of the life of institu-

¹ Lowell, *op. cit.*, p. 72 — Democracy and the Constitution.

² *Ibid.*, p. 41 — Cabinet Responsibility.

tions as well as of individual organisms. One constitution may be altered less frequently or easily than another, but an absolutely unchangeable constitution is an impossibility.

We must therefore be prepared to expect that the American Constitution will, when its present condition is compared with its fire-new condition in 1789, prove to have felt the hand of time and change.

Historical inquiry verifies this expectation. The Constitution of the United States, rigid though it be, has changed, has developed. It has developed in three ways, to which I devote the three following chapters.¹

These three ways are by amending, by interpretation, and by usage.

We shall perceive after examining these three sources of change, not only that the Constitution as it now stands owes much to them, but that they are likely to modify it still further as time goes on. We shall find that, rigid as it is, it suffers constant qualification and deflection, and that while its words continue in the main the same, it has come to mean something different to the men of 1888 from what it meant to those of 1808, when it had been at work for twenty years, or even to those of 1858, when the fires of protracted controversy might be thought to have thrown a glare of light into every corner of its darkest chambers.²

The modes of amendment are, first, by a vote of two-thirds of each house, ratified by three-fourths of the State legislatures, and second, by a demand made by the legislatures of two-thirds of the States that Congress shall summon a constitutional convention. Congress has no option to refuse, but may apparently prescribe the mode of election and composition of the convention. The decisions of the convention may be made actual amendments at the discretion of Congress, either through ratification by three-fourths of the legislatures or by three-fourths of conventions called in the several States.

Of the fifteen amendments which have been passed, twelve involve questions of comparatively unimportant detail.

¹ *Op. cit.*, Part I., Chap. XXXI., p. 352.

² *Ibid.*, p. 354.

The fourth group is the only one which marked a political crisis and registered a political victory. It comprises three amendments (XIII., XIV., XV.) which forbid slavery, define citizenship, secure the suffrage of citizens against attempts by States to discriminate to the injury of particular classes, and extend federal protection to those citizens who may suffer from the operation of certain kinds of unjust State laws. These three amendments are the outcome of the War of Secession, and were needed in order to confirm and secure for the future its results. The requisite majority of States was obtained under conditions altogether abnormal, some of the lately conquered States ratifying while actually controlled by the Northern armies, others as the price which they were obliged to pay for the readmission to Congress of their senators and representatives. The details belong to history. All we need here note is that these deep-reaching, but under the circumstances perhaps unavoidable, changes were carried through, not by the free will of the people of three-fourths of the States, but under the pressure of a majority which had triumphed in a great war, and used its command of the military strength and federal government of the Union to effect purposes deemed indispensable to the reconstruction of the federal system.¹

While these amendments may constitute a grave precedent in the future, they at least point to what, in the continual flux and change of the State constitutions, may be called the greatest merit of the federal, — the difficulty of amendment even under the first method. If ever it is attempted by that of a convention constituted by our existing political methods, it is hardly an exaggeration to say that the death-knell will have been sounded of the instrument established by the framers.

But this very difficulty of amendment carries with it another, — that of correcting the possible consequences of error. Among the complaints of the Chicago platform of 1896 was that against the interference of the federal

¹ There is a story, one of the many fathered upon Mr. Lincoln, which if not true is well invented. Speaking to his Secretary of the Treasury he said: "The South has violated the Constitution to break up the Union; I am ready to violate it to preserve the Union; and between you and me, Chase, before we get through, this Constitution is going to have a tough time."

courts by injunction, in matters which are insisted upon as included in State jurisdiction. Suppose that this, which is causing a growing exasperation, should lead to a demand for a popular election of the federal judges, those of the Supreme Court by the country in the presidential year and those of the districts by local vote. It would appeal to Congress by furnishing so many and important offices for party purposes, a want which is increasingly felt with the encroachments of civil service reform, and which is the real reason why the judiciary has been made elective in so many States. A two-thirds vote in both houses would of course place it beyond the presidential veto. It might very well obtain a vote of three-fourths of the State legislatures, since in much more than that proportion the judiciary is already elected. What the consequences would be upon the federal jurisprudence it is unnecessary to point out; but it would certainly be impossible to go back to the method of appointment. Remote as this danger may appear, it will serve to illustrate the fact that, while the Constitution may be available to check an impulse of popular passion, it would be powerless to resist a movement upon which the popular mind had apparently come to a fixed decision; even though that decision had been worked up by a comparatively small group or faction and did not at all represent the mature and well-informed judgment of the country.

Mr. Lowell says of our system of dividing power among several bodies, separate from and independent of each other, no one of which represents the sovereign people or has authority to express the popular will except to a limited extent:—

The object of such a system is, as I have said, to hinder any development or expression of popular desire except within certain prescribed limits; and in the United States, where these principles have been applied, it is surprisingly difficult to find out the opinion of

the American people upon a matter with which Congress has no power to deal (p. 81).¹

A system which produces a result like that may well be pronounced a failure as far as popular government is concerned. It is precisely in this possibility of enforcing an assumed and manufactured public opinion as if it were a genuine one that the real danger of constitutional amendments consists.

The next method of modifying the Constitution is by interpretation.

The constitution of England is contained in hundreds of volumes of statutes and reported cases; the Constitution of the United States (including the amendments) may be read through aloud in twenty-three minutes. It is about half as long as St. Paul's First Epistle to the Corinthians, and only one-fortieth part as long as the Irish Land Act of 1881. History knows few instruments which in so few words lay down equally momentous rules on a vast range of matters of the highest importance and complexity. . . . It is plain that the shorter a law is, the more general must its language be, and the greater therefore the need for interpretation. So, too, the greater the range of a law and the more numerous and serious the cases which it governs, the more frequently will its meaning be canvassed. . . . The Constitution of the United States is so concise and so general in its terms, that even had America been as slowly moving a country as China, many questions must have arisen on the interpretation of the fundamental laws which would have modified its aspect. But America has been the most swiftly expanding of all countries.²

As to principles of interpretation of course no view is here expressed, facts only being taken into account. It is a peculiar feature of the Supreme Court of the United States that it has to decide not merely whether a given state of fact is in accordance with law, but whether the law on which it is assumed to rest is a valid law. Congress may pass a law which is approved by the President. That law may go into operation and raise up a whole fabric of social facts which cannot be reversed without

¹ *Op. cit.* — Democracy and the Constitution.

² Bryce, *op. cit.*, Vol. I., pp. 363, 364.

serious disturbance. After the lapse it may be of years, a conflict of interests may bring the question of the constitutionality of the law before the Supreme Court. If the court decides in the affirmative it may be charged, especially if there is an actively opposed fraction of public opinion, with wresting the law to the facts; if in the negative, the court is liable to unpleasant and damaging collision with the facts. And a Pandora's box stands always ready at hand in the clause of the Constitution which says that Congress shall have power

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

There could hardly be a more striking illustration of this than the Legal Tender Act of 1862. In 1869 — after the war was over and the Act had done its work and permeated every artery of social life — a case (*Hepburn v. Griswold*) was brought before the Supreme Court to decide whether a note dated June 20, 1860, that is, before the passage of the Act, and maturing February 20, 1862, but of which payment had been delayed till after the passage of the Legal Tender Act, could be satisfied with legal tender notes. Five judges, Chase, Nelson, Grier, Clifford, and Field, against three, Swayne, Davis, and Miller, declared this to be unconstitutional. Later in 1869 Judge Grier died and Judge Strong was appointed by President Grant. By Act of Congress, April 10, 1869, another member had been added to the Supreme Court, and Judge Bradley was also appointed by President Grant. On May 1, 1871, the previous decision was reversed by five judges, Swayne, Miller, Davis, Strong, and Bradley, against Chase, Nelson, Clifford, and Field. Here were two exactly opposite decisions in the same court on the same subject within two years. How can there be any

feeling of security in a community which is liable to that? Secondly, bitter complaint was made that the court was packed by President Grant; that is, two appointments were made for the purpose of reversing the decision. It is difficult to see how he could do otherwise. Suppose any President to have strong convictions upon some burning question before the country, and to believe that the welfare of the people depended upon its being settled rightly. The Constitution gives him the power of settling it, perhaps long after it has been once decided and through a reversal of that decision, by the appointment of a judge. Could a conscientious man do otherwise than follow his convictions? At any rate, rightly or wrongly, the power is certain to be exercised; and the President will be praised or condemned, not for using the power, but upon whether he is thought to have used it rightly or not. Again, one of the methods by which the House of Lords in England has been brought into subjection to the House of Commons is the power of the Crown, that is, the ministry, to create new peers. If Congress has the power to increase the number of judges in the Supreme Court at a time when a partisan President is ready to carry out its views, the Constitution might be in a good deal of danger. The real guarantee is in the character of the President and not in the Constitution itself.

But the full force of the legal tender decision has not yet been stated. In the case already cited the question was whether a note issued and maturing before the Legal Tender Act could be paid in notes authorized by it. But in 1884 a third case (*Juillard v. Greenman*) came up for decision as to the validity of a tender of United States notes in payment of a note of hand, when such notes, both at the time of creating and of the maturity of the debt, were not only a legal tender but redeemable in gold at the sub-treasury. Eight judges out of nine pronounced

in the affirmative, thus settling the whole question, at least until a majority can be secured the other way. It is to be noted that the decision turned mainly upon whether the Act was necessary and proper for carrying on the war, which is in no sense a legal or even a constitutional question, but a financial and political one, as to which the opinions of the same number of educated citizens might be quite as worthy of attention as that of the Supreme Court.¹ Accordingly, the large class of business men who think that our financial disorders are owing to the legal tender notes, even though redeemable in gold, are still very bitter against the Supreme Court. It may be doubted whether they would regard it as a calamity to have the court packed to reverse the decision. It seems clear, however, as already remarked, that if the court had decided the other way, one of two things must have happened: either that the legal tender notes would have gone serenely on their way, regardless both of the decision and the court, or else that a financial crash of great severity would have thrown a light upon the main question. There is great danger in looking to the Supreme Court and the Constitution for a remedy against clumsy and blundering finance.

The much-vexed question of strict and liberal construction of the Constitution comes also under the head of interpretation, but as this branch has affected chiefly the relations between the federal government and the States, it will be taken up in connection with the latter.

The third method of modifying the Constitution is by usage.

¹ In point of fact, therefore, the wisdom and appropriateness of legislation, instead of being settled in advance by thorough debate in Congress under executive guidance, are expected to be decided *ex post facto* by the Supreme Court.

How long can the authority of any tribunal sustain such a weight of responsibility as that?

Custom, which is a law-producing agency in every department, is specially busy in matters which pertain to the practical conduct of government. Understandings and conventions are, in modern practice, no less essential to the smooth working of the English constitution than are the principles enunciated in the Bill of Rights. In the United States there are fewer such understandings than in England, because under a constitution drawn out in one fundamental document everybody is more apt to stand upon his strict legal rights, and the spirit of institutions departs less widely from their letter. Nevertheless, some of those features of American government to which its character is chiefly due, and which recur most frequently in its daily working, rest neither upon the Constitution nor upon any statute, but upon usage alone. Here are some instances.

The presidential electors have, by usage, and usage only, lost the right the Constitution gave them of exercising their discretion in the choice of a chief magistrate.

The President is not reëlected more than once, though the Constitution places no restriction whatever on reëligibility.

The Senate now never exercises its undoubted power of refusing to confirm the appointments made by the President to cabinet offices.

Both the House and the Senate conduct their legislation by means of standing committees. This vital peculiarity of the American system of government has no firmer basis than the standing orders of each house, which can be repealed at any moment, but have been maintained for many years.

The Speaker of the House is, by a similar practice, intrusted with the nomination of all the House committees, an arrangement which gives him an influence upon legislation greater than the President's.

The chairmen of the chief committees of both houses, which control the great departments of State (*e.g.* Foreign Affairs, Navy, Justice, Finance), have practically become an additional set of ministers for those departments.

The custom of going into caucus, by which the parties in each of the two houses of Congress determine their action, and the obligation on individual members to obey the decision of the caucus meeting, are mere habits or understandings, without legal sanction.

The rule that a member of Congress must be chosen from the district as well as from the State in which he resides, rests on no federal enactment; indeed, neither Congress nor any State legislature would be entitled thus to narrow the liberty of choice which the words of the Constitution imply. Though some State legislatures have affected so to do.¹

¹ Bryce, *op. cit.*, Chap. XXXIV., p. 383.

The whole spoils system, which civil service reform has fought for so many years, is quite outside of the Constitution.

There is one other feature which is just as purely a matter of usage, and that is the entire exclusion of the executive from any share in the discussion of legislation and the public proceedings of both houses.

One of the changes which the last seventy years have brought about is so remarkable as to deserve special mention. The Constitution contains no provisions regarding the electoral franchise in congressional elections save the three following:—

That the franchise shall in every State be the same as that by which the members of the “most numerous branch of the State legislatures” are chosen. (Art. I., § 2.)

That when any male citizens over twenty-one years of age are excluded by any State from the franchise (except for crime) the basis of representation in Congress of that State shall be proportionately reduced. (Am. XIV., 1868.)

That “the right of citizens of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.” (Am. XV., 1870.)

Subject to these conditions every State may regulate the electoral franchise as it pleases.

In the first days of the Constitution the suffrage was in nearly all States limited by various conditions (*e.g.* property qualifications, length of residence, etc.) which excluded, or might have excluded, though in some States the proportion of very poor people was small, a considerable number of the free inhabitants. At present the suffrage is in every State practically universal. It had become so in the free States even before the war. Here is an advance towards pure democracy effected without the action of the national legislature, but solely by the legislation of the several States, a legislation which, as it may be changed at any moment, is, so far as the national government is concerned, mere custom. And of this great step, modifying profoundly the color and character of the government, there is no trace in the words of the Constitution other than the provision of the fourteenth and fifteenth amendments introduced for the benefit of the liberated negroes. . . .

In examining this point one must distinguish between subjects on which the Constitution is silent and subjects on which it speaks. As regards the former there is little difficulty. Usage and legislation may expand the Constitution in what way they please, subject only

to the control of public opinion. The courts of law will not interfere because no provision of the Constitution is violated; and even where it may be thought that an act of Congress or of the executive is opposed to the spirit of the Constitution, still, if it fall within the range of the discretion which these authorities have received, it will not be questioned by the judges.

But sometimes the courts feel bound to declare some statute, or executive act, done in pursuance of usage, contrary to the Constitution. What happens? In theory the judicial determination is conclusive, and ought to check any further progress in the path which has been pronounced unconstitutional. But whether this result follows will in practice depend on the circumstances of the moment. If the case is not urgent, if there is no strong popular impulse behind Congress or the President, no paramount need for the usage which had sprung up and is now disapproved, the decision of the court will be acquiesced in; and whatever tendency towards change exists will seek some other channel where no constitutional obstacle bars its course. But if the needs of the time be pressing, courts and Constitution may have to give way. *Salus reipublica lex suprema*. Above that supreme written law stands the safety of the commonwealth, which will be secured, if possible, in conformity with the Constitution; but if that be not possible, then by evading or even by overriding the Constitution. This is what happened in the Civil War, when men said that they would break the Constitution in order to preserve it.

That collisions have been rare is good evidence of the political wisdom of American statesmen and lawyers. But politicians in other countries will err if they suppose that the existence of a rigid or supreme constitution is enough to avert collisions, or to secure the victory of the fundamental instrument. The American Constitution has stood unbroken because America has never seen, as some European countries have seen, angry multitudes or military tyrants bent on destroying the institutions which barred the course of their passions or ambition. And it has also stood because it has submitted to a process of constant, though sometimes scarcely perceptible, change which has adapted it to the condition of a new age.

The solemn determination of a people enacting a fundamental law by which they and their descendants shall be governed cannot prevent that law, however great the reverence they continue to profess for it, from being worn away in one part, enlarged in another, modified in a third, by the ceaseless action of influences playing upon the individuals who compose the people. Thus the American Constitution has necessarily changed as the nation has changed,—has changed in the spirit with which men regard it, and therefore in its own spirit. To use the words of the eminent constitutional lawyer

whom I have more than once quoted: "We may think," says Judge Cooley, "that we have the Constitution all before us; but for practical purposes the Constitution is that which the government, in its several departments, and the people in the performance of their duties as citizens, recognize and respect as such; and nothing else is."¹

We will return for a moment to the considerations advanced by Mr. Lowell in the last chapter.

We have not yet considered the effect of a responsible ministry upon the most vital part of our government, — the part on which the whole system hinges, and that is the authority of the courts. Their power to disregard a statute which violates the provisions of the Constitution is the barrier that preserves the limits of the different forces in the government, that prevents gradual and unobserved encroachments, and makes it possible to maintain a system of divided sovereignty.

The reader may be inclined to ask how a responsible ministry affects the matter. It affects it vitally, because, as I have attempted to show, a responsible ministry involves the fusion of the legislative and executive branches of the government, and the concentration of all political power in the hands of the direct representatives of the people; and this, accompanied by the increased excitement over national issues and the decay in the political power and importance of the States, would accustom us to seeing rapid and unlimited effect given to the opinions of the majority.²

Here, again, the reasoning is wholly vitiated by assuming that the legislature includes the direct representatives and the only direct representatives of the people. The fact is just the reverse. The President — of whom the Cabinet are the agents — is the only direct representative of the whole people, while Congress includes only the direct representatives in one house of 356, and in the other of 45, fractions of the people. It only represents indirectly the people as a whole.

The courts would find themselves in a very different position. Instead of standing between the different branches of government among which political authority is divided, and limiting the power of one for the benefit of another, they would have the full force of

¹ Bryce, *op. cit.*, pp. 383-389.

² Lowell, *op. cit.*, pp. 40, 42.

government on one side and nothing to support them on the other. Under a parliamentary government a court which should venture to declare a statute unconstitutional would be brought face to face with the people themselves.¹

This overlooks the immense force of the distinction just drawn. If the two branches were contending face to face for supremacy before the tribunal of public opinion, each would be most anxious to have the Constitution and the Supreme Court on its side. The President and the Cabinet would at once be disposed and be compelled to seek for the judgment of the Supreme Court in advance upon legislation proposed by them; while even with a majority of both houses on the same party side with the President, the attacks of a watchful and unsuppressed opposition would make encroachments upon the Constitution extremely dangerous. From our point of view a strong executive, publicly responsible not to Congress but to the nation, and having that responsibility enforced by Congress, would be the most vigilant and uncompromising guardian both of the court and the Constitution. No President would dare, in the face of such criticism, to appoint a judge from motives of personal or party prejudice, nor could Congress increase the number of judges till it had forced the executive—always by pressure of public opinion—to submit a proposal to that effect.

One more quotation from Mr. Lowell will furnish a commentary upon the abstract restraining power of the Constitution.

We are naturally in the habit of ascribing to the courts a sort of supernatural power to regulate the affairs of men and to restrain the excesses and curb the passions of the people. We forget that no such power can really exist, and that no court can hinder a people that is determined to have its way; in short, that nothing can control the popular will except the sober good sense of the people themselves.

¹ Lowell, *op. cit.*, p. 43—Cabinet Responsibility.

That is why we insist here upon the importance of getting at the public opinion of the people as a whole instead of by groups and fractions.

Our constitutional law depends for its force upon the fact that it approves itself to the good sense of the people; and the power of the courts is held upon condition that the precedents established by them are wise and statesmanlike, and founded upon enduring principles of justice which are worthy of the respect of the community. . . .

What is needed to maintain the esteem in which the courts are now held is a careful study of the principles established by the Constitution, and a clear development of the theories of constitutional law; not theory in the narrow sense of something contrasted and often irreconcilable with practice. Theory in this sense is nothing more than a set of doctrines, at best the logical result of premises more or less inaccurate. It is extremely easy to manufacture, and is justly an object of suspicion with the public. What we need in the study of constitutional law is theory in a higher sense. We need that ripe scholarship which regards theory as truth stated in an abstract form, to be constantly measured by practice as a test of its correctness; for theory and practice are in reality correlatives, each of which requires the aid of the other for its own proper development.¹

The missing link here is the agency which shall convince the mass of the people, who cannot, of course, study constitutions for themselves, that the precedents and the study by lawyers and courts are of the kind here described, instead of leaving them in a state of doubt and suspicion; which shall appeal directly to their sober sense and not permit them to be led away by demagogues, party politicians, and an inflammatory press. This agency, we maintain, can be found only in tried and tested leaders, in whose personality the people have confidence. It may be added that no amount of study will get any more out of the Constitution than there is in it; that its adaptation to circumstances through interpretation, usage, or amendment, is a question of statesmanship, of a large consideration of the public welfare, and of a combined guidance of and response to public opinion.

¹ *Op. cit.*, *Responsibility of American Lawyers*, pp. 127-129.

Mr. Bryce sums up the case as follows : —

A European reader who has followed the facts stated in the last foregoing chapters may be inclined to dismiss the question summarily. "Rigid constitutions," he will say, "are on your own showing a delusion and a sham. The American Constitution has been changed, is being changed, will continue to be changed, by interpretation and usage. It is not what it was even thirty years ago; who can tell what it will be thirty years hence? If its transformations are less swift than those of the English constitution, this is only because England has not even yet so completely democratized herself as America had done half a century ago, and therefore there has been more room for change in England. If the existence of the fundamental Constitution did not prevent violent stretches of executive power during the war, and of legislative power after as well as during the war, will not its paper guarantees be trodden under foot more recklessly the next time a crisis arrives? It was intended to protect not only the States against the central government, not only each branch of the government against the other branches, but the people against themselves, that is to say, the people as a whole against the impulses of a transient majority. What becomes of this protection when you admit that even the Supreme Court is influenced by public opinion, which is only another name for the reigning sentiment of the moment? If every one of the checks and safeguards contained in the document may be overset, if all taken together may be overset, where are the boasted guarantees of the fundamental law? Evidently it stands only because it is not at present assailed. It is like the walls of Jericho, tall and stately, but ready to fall at the blast of the trumpet. It is worse than a delusion; it is a snare; for it lulls the nation into a fancied security, seeming to promise a stability for the institutions of government, and a respect for the rights of the individual, which are in fact baseless. A flexible constitution like that of England is really safer, because it practises no similar deceit, but by warning good citizens that the welfare of the commonwealth depends always on themselves and themselves only, stimulates them to constant efforts for the maintenance of their own rights and the deepest interests of society."

This statement of the case errs as much in one direction by undervaluing, as common opinion errs by overvaluing, the stability of rigid constitutions. They do not perform all that the solemnity of their wording promises. But they are not, therefore, useless. . . . The rigid Constitution of the United States has rendered, and renders now, inestimable services. It opposes obstacles to rash and hasty change. It secures time for deliberation. It forces the people to think seriously before they alter it or pardon a transgression of it. It

makes legislatures and statesmen slow to overpass their legal powers, slow even to propose measures which the Constitution seems to disapprove. It tends to render the inevitable process of modification gradual and tentative, the result of admitted and growing necessities rather than of restless impatience. It altogether prevents some changes which a temporary majority may clamor for, but which will have ceased to be demanded before the barriers interposed by the Constitution have been overcome.

It does still more than this. It forms the mind and temper of the people. It trains them to habits of legality. It strengthens their conservative instincts, their sense of the value of stability and permanence in political arrangements. It makes them feel that to comprehend their supreme instrument of government is a personal duty, incumbent on each one of them. It familiarizes them with, it attaches them by ties of pride and reverence to, those fundamental truths on which the Constitution is based.¹

There is one more advantage which remains to be derived from it: that it should stand as a rule of conduct to both branches of the government and to different parties contending in public debate for the approval of the nation; to be exalted and appealed to by all, whether in its fixed form or its fully discussed and adjudicated modifications as the standard by which they expect and desire to be judged.

It may be said that, starting from the simple Senate report, we have soared into regions of pure imagination, and evolved consequences which in no wise follow from it and are wholly incompatible with our own or any form of government. We reply that that report provides for the necessary initial step of bringing into public contact the two branches of government, which are now kept completely and artificially separate, with a consequent and manifest confusion of their respective powers. Whether this first step may lead to any and what further developments is entirely a matter of experiment, the results of which it is impossible to assume in advance. It has, however, this advantage, — that it is a simple question of

¹ "American Commonwealth," Vol. I., Chap. XXXV., p. 397.

procedure, involving no constitutional change. It could be put in operation at any time by a vote of either house, and adopted by the other or rejected by either or both, if found unsatisfactory. Surely, some one will exclaim, if so simple an experiment, recommended by such authority, has never been tried, there must be some good reason against it. There is an excellent reason and that brings us to the third point suggested in the last chapter. What is the nature of the opposition to be encountered?

It may be said at once that the greatest source of opposition is in Congress itself. Both the Senate and the House know perfectly well that the mere presence of the cabinet officers would strike at the foundation of all the present modes of procedure. Dr. Snow says that for the Cabinet to take part in debate would evidently not be in accordance with the intention of the framers of the Constitution. It is difficult to see where he finds the intention in the absence of language, but the intention as well as the act of the first Congress is obvious enough. The question was, whether Hamilton's report on the finances should be submitted orally or in writing. It was argued on one side that members could not understand it without personal explanation, and on the other that they wanted to take it home and study it. It seems as if a child could have pointed out that both advantages were open to them, but the assigned reasons were not the real ones. Members shrank instinctively from an agency which would compel them to personal and public responsibility.

In the debate on this measure in the House, it was objected that it would establish a precedent which might be extended until we admitted all the ministers of the government on the floor, . . . thus laying the foundation for aristocracy or a detestable monarchy.¹

¹ American Academy of Political and Social Science, Publication No. 106, July, 1892.

There spoke the true spirit of legislative jealousy, and it settled the practice of the government, and it is just as potent to-day.¹ The first desire of Congress is that all the members of both houses should stand on a precisely equal footing; not that each desires this for himself, but each is unwilling to concede more to any other. The presence of the Cabinet would introduce certain individuals who, by their relation to the country and the administration of the government, would occupy a position of superiority. The standing committees are at present a necessity, if any business at all is to be done, but they are made up by the body itself, directly in the Senate and through the Speaker in the House; they are wholly impersonal, except for the temporary prominence of their mouthpiece, the chairman, and therefore involve the minimum of danger that any individual will distinguish himself disproportionately in the

¹ The design of using the Senate as a privy council was baffled as soon as tried. Maclay [William, one of the senators from Pennsylvania, described as an honest and well-meaning man, the bent of whose mind was critical from the first] gives a lively account of the affair. Washington entered the senate-chamber and took the Vice-President's chair. He informed the Senate that he had called for their advice and consent to some propositions respecting the treaty with the Southern Indians, and had brought the Secretary of War with him to explain the business. Gen. Knox produced some papers, which were read. Washington's presence embarrassed the Senate. Finally, a motion was made to refer the papers to a committee. The diarist continues: "As I sat down, the President of the United States started up in a violent fret. 'This defeats every purpose of my coming here' were the first words that he said. He then went on that he had brought his Secretary with him to give every necessary information; that the Secretary knew all about the business, and yet he was delayed and could not go on with the matter." Finally, the President said that he would have no objection to postponing further consideration until the ensuing Monday, but he did not understand the matter of commitment. There was an awkward pause. "We waited for him to withdraw," says the diarist. "He did so with a discontented air." It did not take much of such business to deter Washington from treating the Senate as his privy council. He finally had to do what every President has done since, — make his treaties first, and submit them to the Senate afterwards for ratification. — "Rise and Growth of American Politics," Chap. VI.

eyes of the country; and they have the practical effect of removing all business from the public view and allowing it to be settled according to the wishes and interests of those who have been able to secure admittance to the charmed circle, with little or no personal responsibility. Anything which would even tend to reverse this state of things will meet with strenuous opposition from the start. Of course there are individuals who rise superior to such conditions, at least in conviction, but any attempt to stem the current meets with the penalty of prompt effacement.¹

When the House took up an attitude of hostility towards the Secretary of the Treasury, the system of standing committees, which has had such a monstrous development, was begun. In January, 1795, Hamilton quitted an office which had lost the functions that made it useful for his purposes. The effect of the changed relations upon the conduct of the public business is described with prophetic insight by Fisher Ames in a letter to Hamilton, two years after the latter's retirement from office.

"The heads of departments are chief clerks. Instead of being the ministry, the organs of the executive power, and imparting a kind of momentum to the operation of the laws, they are precluded even from communicating with the House by report. In other countries they may speak as well as act. We allow them to do neither. We forbid them the use of a speaking trumpet; or more properly, as the Constitution has ordained that they shall be dumb, we forbid them to explain themselves by signs. Two evils obvious to you result from all this. The efficiency of government is reduced to a minimum; the proneness of a popular body to usurpation is already advancing to its maximum; committees already are the ministry, and, while the House indulges a jealousy of encroachment on its functions which are properly deliberative, it does not perceive that these are impaired and nullified by the monopoly as well as the perversion of information by these committees. The silly reliance of our haughty House and Congress prattlers on a responsibility of members to the people, etc., is disgraced by every page in the history of popular bodies."²

¹ Compare what is said in Chap. XIV. as to the attempt to deprive M. Thiers of the right of speech in the French Chamber; also the quotation from Speaker Reed in the last chapter as to the relative position of the Cabinet and the Senate.

² "The Rise and Growth of American Politics," Chap. VI.

Another source of opposition is the rapidity and force of the crystallizing of precedents. All those practices which Mr. Bryce points out to be wholly the results of usage have come to be considered as parts of the Constitution, or flowing directly from it. Anybody who ventures to question their obligation is greeted with obloquy as decrying the institutions established by our fathers. And this disposition is greatly increased through the large proportion of our public men which consists of lawyers. No disrespect is intended in saying that the legal profession, as a rule, dislikes a general principle, which is open to dispute, and clings to the firm ground of a decision.

A singular result of the importance of constitutional interpretation may be here referred to. It is this, that the United States legislature has been very largely occupied in purely legal discussions. When it is proposed to legislate on a subject which has been heretofore little dealt with, the opponents of a measure have two lines of defence. They may, as Englishmen would in a like case, argue that the measure is inexpedient. But they may, also, as Englishmen cannot, argue that it is unconstitutional, i.e. illegal, because transcending the powers of Congress. This is a question on which a stronger case can often be made, and made with less exertion than on the issue whether the measure be substantially expedient. Hence it is usually put in the forefront of the battle, and argued with great vigor and acumen by leaders who are probably more ingenious as lawyers than they are far-sighted as statesmen.

A further consequence of this habit is pointed out by one of the most thoughtful among American constitutional writers (Judge Hare, "Lectures on Constitutional Law," p. 135). Legal issues are apt to dwarf and obscure the more substantially important issues of principle and policy, distracting from these latter the attention of the nation as well as the skill of congressional debaters.¹

The legality here referred to is of course more and more dependent on precedent, and as the lawmaking power, checked only by the negative veto of the President and the very much hampered negative of the Supreme Court, is exclusively in the hands of Congress, working by the

¹ Bryce, *op. cit.*, Chap. XXXIII., p. 377.

methods we have described, the precedents are exceedingly likely to be all one way.

Still another obstacle presents itself in the passive acquiescence of the people in the practice of regarding the legislature as the equivalent of the government. If the interest of the people as a whole is at variance with that of the legislature, and yet the people leave to the legislature the entire initiative and control of the working of government, while scholars and political writers frown upon and sneer at any attempt to discredit the legislature as exclusively representing the people, it is evident that a heavy inertia, not to speak of an active resisting force, has to be overcome. Mr. Lowell well illustrates this.

If it were the duty of the courts to give effect to the wishes of the people upon constitutional questions, our government would be a truly absurd one. The judicial body would then be a sort of additional legislature extremely ill fitted for its task. But, in fact, the duty of the courts is almost the reverse of this, because the popular desire for a law may very well be presumed from the fact that it has been passed by the legislature, and the courts are given power to treat a statute as invalid in order that they may thwart the popular will in cases where that will conflicts with the provisions of the Constitution. . . . Stated in such a form, the power of our judiciary is certainly very startling; and it is even more surprising that a power so extensive should have been placed in the hands of a small number of men, chosen exclusively from one profession, and this among a people who are jealous of the influence of all associations and professions, and who are impatient of authority of every kind. The truth is that our fathers, while admitting the right of the people to govern within certain limits, believed that there were principles more important than the execution of every popular will, and rights which ought not to be violated by the impulse and excitement of a majority; and the constitutional principles established by them remain in force to-day, because we still believe in the sacredness of the principles which they preached. The duty of watching over and guarding these fundamental principles, — these legal morals, if I may be allowed the term, — of developing, explaining, and defending them, rests with the legal profession; and if this is true, it is surely difficult to overestimate the responsibility of lawyers in America.¹

¹ *Op. cit.* — Responsibility of American Lawyers, pp. 124-126.

In other words, the legislature and the people are supposed to be one united force, to be held in check together by the courts; while the alternative that the executive, the direct representative of the people, should assert itself against the legislature, the indirect representatives of the people, and the courts stand as arbiters between the two, seems never to present itself for consideration. Yet in the first case the courts are expected to act as a political barrier against impetuous and combined rushes of the people and the legislature, whereas in the other that work would fall to the lot of the executive, while the courts could revert to their judicial function of deciding between the two. And this carries the further conclusion, that whereas, so long as the legislature practically holds the executive in subjection, the courts have no independent means of enforcing their decrees, in the other case the courts, looking to public opinion in the elections for such enforcement, would, by throwing their weight now on one side and now on the other, really exercise that judicial balance, the force of which is now seriously threatened.

The opposition hardest to be overcome, however, is that of the lobby. We have pointed out¹ the immense power which private interests have acquired and are more and more acquiring in a legislative body, disorganized, without leaders, composed of equal units, and working by standing committees, whether elected or appointed by the presiding officer; a body in which majorities must be made up by an accumulation of votes one by one, worked up by log-rolling, trading, and all sorts of motives, in practical secrecy, without personal responsibility and with very little reference to the administrative effect upon the country. As party success has come to depend largely upon operations of this kind, so, on the other hand, the private interests, having intrenched themselves behind the parties in Con-

¹ See Chap. XIX.

gress, will be in deadly hostility to any movement which threatens to introduce public and personal responsibility among members and by public debate and discussion to let in a flood of light upon methods of legislation. The prospect of encountering successfully a combined resistance like that described might well excite despair in any less momentous cause.

One more difficulty is to be encountered in the fixed idea in the minds even of such students as Dr. Snow and Mr. Lowell, and to a much greater degree in the average mind, that the Senate report necessarily implies a copying of the English system, and constitutional changes fitted to adapt ours to that: and this objection finds powerful support in the widespread jealousy of such imitation, though, as we have seen, eminent critics do not hesitate to hold up for our reproof the assumed superiority of English municipal government. We have tried to show that the different structure of our government would admit of the application of the great principle of executive responsibility in a wholly different way. Even if, however, it should prove to be otherwise, the experiment, which offers such "obvious advantages," could be discontinued after a very easy trial. No doubt our reasoning presupposes the soundness and conservatism of the great mass of public opinion, but that is the basis upon which popular government must ultimately rest, and before we can pronounce as to its failure or success we must show that we have provided adequate tests of the quality of that public opinion. And we hold that the most available of such tests is the embodiment of the will and judgment of the majority in a single individual, whose character and motives and ability have been made known to them by the severest tests of discussion, criticism, and conflict in a legislature. It will be observed that neither Dr. Snow, nor Mr. Lowell, nor Mr. Reed seems to recognize any difference between pub-

lic opinion expressed as a whole and in comparatively small fractions; or to imagine any other mode of getting at it besides the operation of caucus politicians in congressional districts or State legislatures.

But if the legislature and the interests behind it are inherently hostile to the measure proposed, with the executive the case is exactly reversed. The late Benjamin F. Bristow of Kentucky, a man of high character and ability, and greatly respected, was Secretary of the Treasury under President Grant in 1874. The writer of this work met him shortly after his leaving office at a dinner-party in Massachusetts. The subject having been introduced, Mr. Bristow of his own accord went over in substance all the arguments in behalf of the admission of the Cabinet to Congress which have here been put forward and stated that he would never again accept a cabinet office without it. A friend also bears testimony to having heard ex-President Hayes in a private discussion express similar opinions. At a later period the writer being in Washington was urged by the editor of a newspaper, who was strongly in sympathy, to call upon Hon. John Sherman, then Secretary of the Treasury under President Hayes. As soon as the subject was opened, Mr. Sherman said that it ought to be done and he would like to go into the House to-morrow. It is very curious that Mr. Bristow, at the time referred to and on subsequent occasions, evaded earnest solicitations to make some public utterance upon the subject, and that neither Mr. Hayes nor Mr. Sherman ever made any public allusion to it. There seems to be in the American political mind a fear of originality or of having an independent opinion, which, with a shrinking from any charge of self-seeking, adds greatly to the difficulty of advocating any concentration of power.

It may be added that Hon. John D. Long, of Massachusetts, whose public life in the State legislature, as governor

of that State, as a member of Congress, and as a cabinet officer, lends to his testimony, besides all else, the full weight of experience, has recently, in a public address, declared himself to be in favor of the principle contained in the senate report.

There appear to be only two ways of promoting the cause of executive responsibility. One is a separate party movement in the hope of eliciting the support of one of the great national parties, which in the face of opposition such as has been described appears for the present at least almost hopeless. The other is, that some President by message to Congress or public address, or some cabinet officer, in or out of office, by taking the stump, should start the movement by direct appeal to public opinion. The methods of selection of presidential candidates as already described¹ do not seem likely to bring forward men of that kind. The question may as well, however, be stated fairly. The battle of the future is to be between the executive backed by the people, and the legislature with the private and class interests behind it, a battle as certain and as momentous as that with slavery itself. The conflict may be postponed, but it cannot be averted. The only question is whether there will be wisdom and patriotism and public spirit aggressive enough to meet it in time and guide it to successful results, or whether it will be left to drift on till it leads to consequences like those of England in 1640 or France in 1789.

The difficulty of propagandism over so vast a field as the United States has led forcibly to the conclusion that the work must be done, if at all, through the individual States, where the need is precisely the same, where the means of putting it in practice are so much more available, and from whence it could be extended to the other States and to the federal government. That topic will be next taken

¹ See Chap. XVI.

into consideration, but in the meantime it may be interesting to glance at two current pictures, photographs, so to speak, of the condition of things which results from the want of executive guidance of legislation.

WASHINGTON, *June 8.*— As one Democratic convention after another is held, the absolute lack of harmony between the President and his party grows more striking.

In fact, ever since the war, the barriers between the White House and the Capitol have been growing higher and sinking deeper. A man who makes a study of the development in Washington, tells me that he believes that it is only a question of a short time when the President will be almost continually at variance with Congress.

He gives it as his reason that the great bond of union between the two has been patronage. On that, Congress and the President have come together. It has afforded a basis by which the executive was enabled to make himself felt in the legislative branch. The successive placing of practically all the minor offices of the government under civil service rules has acquitted the great majority of Congress of any responsibility to go and see the President or the heads of departments. They might visit them to discuss great questions, but as a matter of fact they do not, and they never have.

In England, the executive branch is kept in touch with the legislative side, because the two are practically one. The minute the executive ceases to be in harmony with the legislative, the former goes out of office.

In Washington, the executive has no standing whatever with the legislative, except as they are brought in contact by artificial means, and this artificial means has always been the disposition of the patronage.

Members of Congress on both sides admit that one of the growing evils of the government is the breach which is opening up along the lines I have suggested. They see no way to help it except by having the cabinet officers selected out of one branch or the other of Congress, or at least by cabinet officials having membership on the floor. To-day, hardly one congressman in ten has been at the White House during this session of Congress. They have nothing to go for unless they wish to obtrude their views upon the President, or else are summoned by him to give them. Neither one is natural, and neither one has happened.

The result is that the power of the Speaker of the House is constantly growing at the expense of the executive. In the next two years the financial and tariff questions will be more subject to the veto of the Speaker than to any other power. This is why Mr. Reed,

if he is not elected to the presidency, can be of more service in the chair of the House than in any other place, and his friends will go at once to work to insist that he shall run again in case he is not nominated at St. Louis.¹

WASHINGTON, *January 13.*—The absence of close affiliation between the administration and the Republican leaders in Congress is painfully apparent.

In the House the Democrats sit in their seats and with derision call on their opponents to know what the policy of the administration is, while no one on the Republican side of the chamber seems to feel confident enough to make reply.

The only Republican who has ever felt that he had the right to speak for the President is Grosvenor of Ohio, but since the fierce attack on the administration upon the civil service matter he is no longer recognized as Mr. McKinley's spokesman. Of the other leaders Governor Dingley (chairman of Ways and Means) is the only one who is in a position to take that rôle, and he seems to be entirely indifferent when the Democrats fling out their taunts and gibes.

It is only a few months since the Democrats declined to treat Cleveland's administration as their own. This is not by any means the case among the Republicans now, who are loyal to Mr. McKinley; but nevertheless it is perfectly apparent that the communication between the executive and the Republican majority in Congress is not close. The two branches are simply drifting apart. It would be a godsend to the country if something would happen to get things out of the dreary monotony and set the President and his friends in Congress working together along certain well-defined lines of policy.²

This picture will gain force by reference to the reports of applause from the galleries—very common in the House and increasingly so in the Senate—following any piece of declamation fitted to excite popular passion. In the British Parliament the slightest demonstration on the part of the spectators would be followed by the instant expulsion of every one of them. One of the most marked features of the first French Revolution was the part which

¹ Washington correspondent, *Boston Daily Advertiser*, June 9, 1896.

² Correspondence, *Boston Daily Advertiser*, January 14, 1898. The godsend has since made its appearance in full measure in the shape of a foreign war.

the mob used to take in the debates of the Legislative Assembly and the Convention. The scale of operation in Washington is smaller but the principle is the same. That Congress should permit such occurrences is not the least significant mark of the condition into which it is falling.

CHAPTER XXXII

THE EXECUTIVE IN THE STATE

IN examining the State governments we have seen that the main difficulty running through them all is the same as with the federal government, — the absorption of power by the legislature, with the common result of impotence, both in that and the executive, for any stable government. There is this difference, however, that the federal executive, the President, is the head of a powerful organization, consisting of one man in every place from his Cabinet down to the lowest departments of administration, even within the limits of the States; whereas the governor of a State is hampered by a body of officials separately elected in all the chief departments, independent of him and cutting him off completely from the whole chain of subordinate administration. Even in the military department, the control of which by its head is absolutely necessary to any kind of efficiency, the officers are elective from below. While, therefore, the President of the United States does wield a very great power, even if in subjection to the legislature, the governor of a State is really nothing but a figurehead, except for such scraps of power as the legislature may see fit to dole out to him, or as he can obtain by lobbying and intrigue.

We will take, as before, Massachusetts in the first place as an example, and our argument will be directed to establishing two points: —

1. That the report of the United States Senate committee, referred to in the last chapter, should be applied to the legislature of the State, and,

2. That the governor should have the power of appointment and removal of every State executive official, with or without the approval of the Senate, but without reference to the council.

These propositions, again, will need to be considered from different points of view.

1. The effect upon administration.
2. The effect upon legislation.
3. The effect upon the character of public men.
4. The effect upon the voters and universal suffrage in the State.
5. The effect of example upon other States as well as the federal government.

Of course the putting into practice the Senate report would be worse than useless as long as the present executive organization remains in force. A state treasurer, an attorney-general, a secretary of state, all elected separately and independent at once of each other and of the governor, would simply excite laughter when exposed by question and criticism to any public responsibility. Neither of them could have any policy, because the departments depend upon each other, and no one has any control beyond his own; nor could any one, for the same reason, give any available information without criticising other departments, which would be very likely to produce recrimination. Neither could present a policy from the governor, because the governor, having no power, can have no policy, and if he had, the separately elected heads of departments are under no obligation to advocate it or carry it out. The first step, therefore, is to procure an amendment to the Constitution, permitting the governor to appoint and remove all officials. This would encounter at once the conservatism of the State, backed by the politicians who find in the elective offices material for stimulating

and rewarding party work, corresponding to the spoils system in national affairs. It is certain that no initiative in this direction will be found in the legislature.

The inertia will be further increased by the crystallizing of precedent in the government by commissions, which has been already described. The people of the State, reduced to despair by the experience of a paralyzed executive and an impotent legislature, are so delighted to find that any public work can be well done as to feel that the blessed change is a result of the system of commissions, and are proportionately enamoured of it; though the dark side is already beginning to show itself. In fact, there is a conflict for supremacy going on between this system and that which has stood the test of history, at least for efficiency, — a single executive head with individual responsibility radiating from it to the furthest extremity. On this latter principle stands before us the federal administration in its simple grandeur for a hundred years, and proving itself on the whole, and, making allowance for the interference of Congress and the suppression of public responsibility, the equal of any in the world.

On this system but two serious encroachments have thus far been made, — the Indian bureau and the Interstate Commerce Commission. The former is complicated with other considerations, but the second offers instruction which will repay a brief examination, particularly as it is the first and thus far the only attempt under the general government to supersede the regular administrative organization and to establish a new basis of executive power.

The Act passed February 4, 1887, constituting the commission, is of interest as giving the structural principle of this new form of government, developed not only in the nation but in the State.¹

¹ Forty-ninth Congress, Second Session, General Statutes, Chap. 104, 1887.

That a commission is hereby created and established to be known as the Interstate Commerce Commission, which shall be composed of five commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. The commissioners first appointed under this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, 1887, the term of each to be designated by the President; but their successors shall be appointed only for the unexpired term of the commissioner whom each shall succeed. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the commissioners shall be appointed from the same political party. Said commissioners shall not engage in any other business, vocation, or employment. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission.

The salaries of these commissioners are \$7500 each, within a fraction that of a cabinet officer. Note first the effect, if not the intention, to break down and crush the regular executive power. There is not, as in the States, a necessity for finding an available substance for an executive deadlock. The regular organization had always worked perfectly well. Foreign Affairs, the Treasury, the Army and Navy, the Revenue System, the Post-office, had, even with the inroads of the spoils system, done no discredit to the country. That Congress should accomplish such a revolution of its own motion, without effective debate and with so little sign of consciousness on the part of the country, is an indication how far our public affairs are at the mercy of chance and the lobby. Instead of a single official, responsible to the President, and through him to the country, there are five officials, with only a joint responsibility, such as it is, of whom the President can appoint the majority only after being in office for three years, and over whom he has no control unless by removal for reasons which involve disgrace. Of course the plea is that with five men a more comprehensive and impartial judgment would be arrived at. The argument has been

already submitted¹ that such is by no means the effect of impersonal executive work. The result is much better reached through a single official with all necessary assistance and open to the public criticism of a legislature.

As with the whole system of commissions the object is, moreover, to get away from popular control. Even sincere and public-spirited men believe that the safest way is to select a group of persons of the best character and qualities, and to hand over the work entirely to them. They forget that a stream cannot rise higher than its source; that if the popular action comes in at any point it will reach to the extremity; the only question being, whether it shall be kept informed by constant comparison of the work and the men, or shall be manipulated by politicians at the initial stage to surrender its subsequent control.

In the next place, there are five comfortable salaries of \$7500, available for political work. The fact that it was necessary to limit the members to not more than three of one party, shows how politics were expected to enter into the case from the start. Politicians would rather divide spoils than not have any.

The vastness and complexity of the interests involved—including all the affairs, financial, administrative, and economical, of some two hundred thousand miles of railroad in every possible variety of magnitude, circumstances, and relation, whether to the corporate proprietors on the one side, to the interests served on the other, or to the State authorities between—may be urged as reasons why the subject cannot be intrusted to one man. But nobody expects all its branches to be intrusted to one man. That should include only the executive work, which in that way only can be best done. The trouble is, that the functions of the commission are at once legislative, executive, and

¹ See Chaps. XXII., XXIV.

judicial, an *imperium in imperio*, a confusion of powers which it is our professed object to avoid.

A glance at some of the powers given will illustrate this. "All charges to be just and reasonable, all others being unlawful. Shorter distance charges are not to be more than for longer under similar circumstances." Imagine the infinite, important, and confused problems which must arise under these loose definitions. "The pooling of freights is prohibited." This is an expedient adopted by the railroads, after all the tests which years of experience can give, to save themselves from the effects of destructive competition. A Congress, composed of men selected by political influences and knowing, to speak in general, nothing whatever of the subject, undertakes to prohibit this and intrusts the enforcement to an irresponsible group of men, who, except as they may learn from experience, know little more. "Full power is given to the commission to require persons and papers and to invoke the aid of the United States courts for that purpose. Any person, firm, or association may make complaint against a railroad, and unless the company gives satisfaction, the commissioners may investigate and take action accordingly."

The statute of March 2, 1889, says : —

"The commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carrier full and complete information, necessary to enable the commission to perform the duties and carry out the objects for which it was created."

If we examine the federal laws and federal decisions of the past few years, we shall find that the increase of centralized power has grown up almost entirely in the exercise of jurisdiction given to the federal government over interstate commerce. . . . The most conspicuous increase of jurisdiction in the recent past is that which has made the federal courts the arena for the deplorable and depressing conflict

between capital and labor. . . . Could the framers of the Constitution, keenly as they felt after the experience of the Confederation that the regulation of foreign and interstate commerce should be intrusted to the general government, have ever conceived that this power would be used to enjoin striking draymen and other workmen in the city of New Orleans, and that too through the application of a law for the prevention of trusts and monopolies?¹

What impression the Act produced is given by a writer upon the subject:—

I pointed out that if rigidly enforced the Act would amount to a confiscation of private property, since, if the investment of private capital in any business can be compelled to make charges for services in accordance with a tariff not framed with any reference to the capital invested or the value of the service rendered; or if the value of services can be estimated by the person served, and paid for only in accordance with his estimate, and without hearing from the party performing the service, the value of private property invested in plants used to render services to other than its owners would speedily disappear. . . .²

The Interstate Commerce Act has now been in operation about four years. Its enforcement, so far from being rigid, has been marked by extreme leniency and enlightened judgment upon the part of the commission appointed to administer it; and the result has been, it seems to me, an entirely unforeseen situation—one still more favorable to the railway companies and charitable to their procedure, if possible, than was the situation prior to the enactment of any Interstate Commerce law whatever. . . . It is as abhorrent to justice that a corporation, or a railway corporation, as it is that a natural person should be compelled by law to act at his peril. But the situation is exactly this: anomalous and intolerable and abhorrent to justice as it may appear, our United States railway companies are compelled by law to act at their peril. For every single one of our forty-four sovereign States, and about all of the Territories, have copious and dictatorial statutes concerning railways, and these statutes are in every case to be added to—not held appealable to or reconcilable with, but collectively additional to—the Act of Interstate Commerce; and each governed and regulated railway company must either select some course of procedure which shall contain some three or four, some larger or smaller, groups of these State and federal statutes, or else

¹ "Full Power to regulate Interstate Commerce," H. B. Shoemaker, *American Law Review*, February, 1895.

² A. Morgan, *Popular Science Monthly*, June, 1892.

disobey one or more groups of them at its peril; or, in almost every possible case presented to it for its discretion, institute suit for a construction of all these statutes in each particular case and carry it to the court of highest resort, the Supreme Court of the United States. . . . Indeed it is only, as I have said, because the Interstate Commerce Commission has thus far been composed of gentlemen and jurists who have used the utmost personal judgment, conservatism, and leniency in administering the statute, that every railway company in the land has not been driven, not once but hundreds of thousands of times, either flatly to disobey, or else to maintain a suit up to the Supreme Court of the United States.¹

In other words, a bad system has been remedied by placing it in the hands of good men. A Star Chamber has exerted itself for the best interests of those under it.

But from the calmness and conservatism of a tribunal as once, at present, or at any time constituted, unhappily no warrant for the future or any other time can be drawn. A change of *personnel* always possible might engraft or enforce a new policy at a moment's notice, with what results nobody could predicate or prophesy. But one can always state that in whatever form the result came, it would amount to an interruption of public business and of the course of commerce.¹

Let us hear another witness, two years later.

The method in which the Interstate Commerce Commission was injected into the system of regulation was, to say the least, of very doubtful wisdom. It was apparently a measure of expediency rather than of wise consideration; as though Congress had said, "Here are some general principles on which the world substantially agrees; let us make them applicable to traffic between the States, and then appoint a commission to work out the rest of the problem, so that we can wash our hands of the whole matter." Years have passed and with them has practically disappeared the usefulness of the commission. To recognize this implies no criticism upon its members. They have, one and all, labored earnestly and seriously to make the law respected and to give value to its principles. The simple fact is this, that the scheme as arranged could not possibly be made to work. The commission was not a court, although it tried to assume a judicial attitude; it was not an executive, though it endeavored to make rules and enforce regulations. Its judgments were presently found to be not enforceable without a litigation *de novo* in the courts; the courts also declined

¹ *Ibid.*

to enforce its *subpœnas* for obtaining evidence, and after a time its administrative rules were accepted or rejected according to the disposition of those upon whom they were designed to act. . . .

This whole lamentable fiasco is due to the draftsmen of the law. It never seems to have occurred to any one in Congress that there was any impropriety in making the same men both prosecutors and judges in the same matters, or that any railroad company would object to accept the opinion of a public prosecutor as a final judgment.¹

The word 'draftsmen' may be expanded a little. The Act was prepared by a standing committee, upon the proposal of wholly irresponsible persons. It was never then or since subjected to effective debate or to criticism by anybody responsible for the government of the country, and has never undergone any serious revision from the creation of the commission to this day.

Again, four years have passed and we hear the following:—

The Interstate Commerce Commission is making strenuous efforts to obtain radical changes in the Act to regulate commerce, that will probably revolutionize the character of the commission and invest it with attributes which hitherto Congress has always declined to confer.

The amendments which are proposed in the commission's last report, and which are substantially embodied in Senate Bill 3354, introduced by Senator Cullom on January 22, 1898, are quite elaborate, but their vital features may be briefly summarized. By these amendments the commission is given power to bring before it at all times, upon complaint or without complaint, any number of interstate carriers; to fix for them maximum rates for the transportation of freight and passengers; to fix minimum rates, when necessary to give effect to the commission's ideas as to the comparative advantages which localities ought to enjoy; to establish through routes and to fix through rates and to prescribe the division thereof; to change classifications of freight; to prescribe the rules and regulations under which traffic shall move, and to determine what privileges and facilities the carriers shall afford. Every such order of the commission may be as general and may bind as many carriers and relate to as many hundreds or thousands of rates, subjects, or details, as the commission's wishes may dictate. It is difficult to imagine any sort of

¹ Aldace F. Walker, *Forum*, April, 1894.

traffic, regulation, or control which these extensive powers would not embrace. Indeed, the proposition is nothing less in effect than to make the Interstate Commerce Commission the traffic manager for each of the hundreds of interstate railroads in the United States and for each mile of its one hundred and eighty thousand miles of railroads.

A complete reversal of the method of enforcing the commission's orders is also proposed. Instead of the present plan, whereby the courts enforce the orders of the commission after a judicial determination that they are lawful, it is now proposed that all the orders of the commission, made in the exercise of the sweeping powers partially enumerated above, shall be self-executing, that is, shall take effect simply by virtue of the commission's decree, without consideration by any court; and if anybody violates them penalties will be imposed, just as fines are imposed for violating acts of Congress. . . .

It is impossible to exaggerate the tremendous power which the commission will wield if it obtains the amendments to the Interstate Commerce Act which it desires. Practically it will have the absolute power of determining what communities shall flourish and where trade and commerce shall be successfully conducted. . . .

To give the commission the powers demanded would deprive every locality of the opportunity, with the coöperation of the railroads, to develop new enterprises, or maintain those already in operation, in order to compete with establishments on other railroads, except with the sanction of the commission. In other words, the commission would throughout the United States direct and distribute local prosperity in accordance with its views; which views have always been extremely unfavorable to the salutary policy of development in which the railroads, in their own interest, have always so actively coöperated with the localities along their lines.¹

Certainly, these amendments did not pass, but that the commission should ask for them shows its tendency. It may be said, again, that the above quotations are from enemies of the commission. But the defence² is only in the reports of the commission and its officers, personally interested parties, and the former are never subjected to any public discussion, nor the latter to any public re-

¹ M. H. Smith, president Louisville & Nashville R. R., *Forum*, April, 1898.

² H. C. Adams, Secretary of the Commission, *Atlantic Monthly*, April, 1898.

sponsibility, while the whole of this important legislation is dependent upon the caprice and party intrigue of a chaotic body like Congress. What would happen under the system of executive responsibility advocated in the last two chapters? The original proposition, instead of being buried in the silence of a committee room till the end of the session, would be taken up at the beginning and discussed, first, on the general principle of government interference, second, as to the fitness of the commission as an instrument, and, third, as to the details of the bill and the powers given; and all this in the presence and with the participation of a high official, representing the public interest and the administration of the government. If the bill was either accepted or rejected against the advice of the government, the latter need not resign any more than now, standing or falling at the elections upon its general bearing and conduct in the eyes of the people, precisely as it does at present. If the Act was passed, while in carrying it out there might be just as many agents as there are now, there would be always one man, say the Secretary of the Interior, held to account in Congress for its working, and who would have nothing else to do but to stand sponsor for this as for all branches of his department. If a commission of inquiry was appointed to ascertain what the effect really was, there would always be somebody to place the result before Congress and to explain, subject to individual criticism, to that body and to the country whether the Act ought to be continued, amended, or repealed. That is the way to carry on a free government.

The analysis of this commission has been made for comparison with the strongly organized federal administrative system, to show how the action of this system is frustrated by the want of contact and coöperation between the legislative and executive powers; and how Congress, partly of

set purpose and in part instinctively and unconsciously, has established this new and startling encroachment on the executive branch. It is instructive also on account of the general and formal protest against the operation of this new machinery.

The government of the District of Columbia may be quoted as another instance of a federal commission. That, however, is less an encroachment upon the federal administration than the establishment of a wholly new and separate government, in the nature of a territorial, which seems to be regarded as satisfactory, as much so, perhaps, as any in the country. It should be observed, however, that there is no evidence that as good results might not be obtained through a single official, directly responsible to the President and through him to Congress, with the advantages we have held to accrue from such responsibility; and, in the second place, as there is no local legislature and no local election, and only such legislative attention as Congress can find time to give, that the government of the District is a purely impersonal and practically irresponsible despotism. The population, apart from that portion of winter residents which is attracted by social opportunities and those for the display of wealth, is almost entirely official. There is no commercial or manufacturing class, and nothing to develop individuality or a critical public opinion. It is in a fair way to become as bureaucratic a centre as Paris itself, and the more orderly and apparently well-governed it is, the more dangerous it becomes as an example to the rest of the country.

No such protest as above indicated has been made in Massachusetts against the work of commissions, because a wholly disjointed and nerveless executive system furnishes no standard of comparison; and the people have come to believe that commissions furnish not merely the best but the only way in which such work can be done. It will

excite surprise and even contempt to say that there is no part of the executive work of the thirty-four commissions which could not be as well or better done by single officials radiating from one head, the governor, chosen by the whole people of the State. In fact, under all the commissions there are such officials for all the executive work. What the commissions really do is to exercise legislative and judicial functions in addition. The legislature not merely gives away executive power, which does not belong to it, but throws off the responsibility of its own, so that it may have more time for party politics and obviate its own inability to adopt any settled and definite policy. Supposing an executive framework like the federal to be provided, then the work of all the commissions, instead of being, as now, separate and often at cross-purposes, would be combined into one harmonious whole, each part adapting itself to the requirements of the others. Every branch in turn would undergo examination by the legislature, and the official responsible for it would be required not merely to furnish all desired information, but to submit plans for work, defend the character of it and the agents employed, and to justify the expenditure incurred.

The importance of the system is particularly apparent in relation to the finances. As has been said, none of the States are in very bad financial condition, but this is owing to the relatively small share of the State government in local expenditure, and the immense resources which it has to draw upon. But the local burdens entailed by the loose and reckless State finance are very serious and the lavish grants to commissions not only threaten to increase these, but to affect the State treasury itself.¹ In the plan

¹ I have been looking at the state auditor's report, which came out about the beginning of the war and consequently has received even less attention than usual. It is so big a book and so clumsily edited that it requires several weeks' study to make out how the account really

proposed the state treasurer would be, next to the governor, the most important official. All the plans of all the departments would pass through his hands. As all proposals for revenue must, with the approval of the governor, come from him, so all proposals for expenditure must secure his concurrence after full discussion in the cabinet under control of the governor, and a balanced scheme of finance, comprehending the whole subject, would be annually submitted for the consideration of the legislature, and behind that of the body of the people of the State. Of course that would require a different kind of men from those who now fill the State offices, but the men are to be had. There is certainly no department of State

stands as to public debt and yearly expenses ; but there can be no doubt that we are paying from one to two millions a year more than we need, and that our debt, which ought to be decreasing, is fast piling up. Then the report deals in lump sums, blindly stated, and payments to persons without specifying what it is for — sometimes without specifying the persons at all — which is contrary to the spirit, if not to the letter, of our law. For instance, that great machine annexed to the State Board of Health's costly apparatus, designated here as "purity of inland waters," paid out last year more than \$20,000 in salaries, of which over a fourth part (\$5615) is entered simply as "other assistants, clerks," etc. Evidently Pindar's remark that "water is the best thing" has been laid to heart by the office-seekers at the State House, for double salaries seem to be paid in that aquatic department of outlay. For example, under the broad coffer dam of the "metropolitan water-loan fund," which only dealt last year with the trifling sum of \$10,422,000 (interest on this loan for two years past being \$508,000), one engineer, F. P. Stearns, received as salary \$8583; H. H. Sprague drew \$5000, Dr. Walcott (who holds two or three other pluralities) \$4500, W. R. Evans the same; in purifying our waters, X. H. Goodenough draws \$3600, which is less by \$341 than Walter N. Davenport got from the \$10,000,000 fund, and so on.

Why should the auditor report in a lump, for the heavenly twins, under "indigent and neglected children," "board and travel of children \$59,569, clothing and supplies \$20,039," a total of \$79,608 — without the least specification for this large sum? Why should he pay to those "indigent and neglected children" (so far as appears) Nathan Coe, H. L. Gardner, and sixteen others, the sum of \$11,000 (more or less) without telling us what it was all for? But there is no end to such conundrums, if you once begin; the fact is, the report is blind. — Boston correspondence, *Springfield Republican*, May 14, 1898.

administration comparable in complexity and difficulty to that of great railroads like the Pennsylvania and the New York Central, especially when under the burden of interference by the State and federal authorities. Yet all that work is done by a general manager or a president as the case may be. How corresponding qualities are to be obtained in public affairs will be noticed presently.

There seems to be no reason why the governor as well as his cabinet should not have seats in the two houses of the legislature, according to the United States Senate report. He is not, like the President, the holder of an office, if we regard merely ceremonial dignity, equal to emperors and popes. He is merely the executive agent of the people of the State, and may well share the responsibility of his staff. It might be left optional with him to attend or not, and his standing with the people would depend upon what use he made of this privilege. Not only plans and estimates of all work must be submitted in advance, but progress reported and criticisms made. All methods, say in education, prisons, charities, taxation, etc., would be subject to constant scrutiny and debate, and committees of inquiry, with no power of interference, could always throw light upon them. Of course, there could be no question of resignation in case of an adverse vote. If the executive could not obtain desired appropriations, or found its policy in any respect condemned, it would acquiesce with a more or less vigorous protest and await the result of the annual election. Then for the first time the political powers would be separated. The officials would be limited to executive work and be publicly responsible for it. The legislature would make the laws and appropriations, and none the less so that this would be done or refused upon the proposal of the executive and not upon that of individual members, although votes might be passed calling upon the executive to propose particular measures or to show

satisfactory reasons for not doing so. All judicial work would be left to the courts, both executive and legislature being equally interested that they should do that and only that.

Not the least valuable of the governor's powers of appointment would be that of officers of the militia. No military force can be of any practical value which elects its own officers. We have seen what has been the history of the National Guard in France,¹ and the very best qualities in a soldiery may be neutralized by the absence of discipline and subordination implied in elective officers. Even in the matter of suppressing riots such a force is an extremely unsafe reliance.² The difference between federal and State troops needs only an allusion.

An important question is whether the power of appointment and removal by the governor should be absolute, or subject to confirmation. There can be no doubt that the best ability could be secured by giving him entire freedom of choice, while all possible danger would be obviated by public, personal, and incessant criticism in the legislature. The public prejudice is, however, so strong that confirmation would probably have to be retained in form, though it would soon become little more. Such confirmation should, however, be lodged with the Senate and not with the council, a collection of executive dry-nurses, without positive functions and without responsibility of any kind.

One of the most vital elements of such strengthened administration would be in interstate and federal rela-

¹ See Chap. X.

² It is on regulars alone that in restoring order perfect reliance can be placed. The militiaman shares the passions of the local parties. If he is politically hostile to the movement which begets the riot he is apt to fire too soon; if he is at heart in sympathy with the movement, he is apt not to fire at all. The regular fires when the word is given. — GOLDWIN SMITH, *Forum*, December, 1896.

tions. At present no effective agreements can be made between States, because the natural agents for such, the executive branch, are wholly without power. Committees of two or more legislatures may indeed meet together, but however promotive of social enjoyment, they must be wholly futile as instruments of negotiation. Without administrative responsibility they would report results, however obtained, to equally irresponsible legislatures, and legislation, based upon wholly inexplicable motives, would have to be carried into effect by interstate commissions, the final link in the chain of irresponsibility. On the other hand, if governors of different States, at the head of powerful organizations penetrating into every branch of State administration, had power to submit definite measures to their respective legislatures, to debate, explain, and defend them publicly, and if passed to carry them into effect under constant and public supervision and criticism; such governors, meeting in conference, might form most valuable agents for interstate agreements, a field of political achievement which is now wholly untouched. Mr. Lowell, in the essay already quoted, thinks that what he calls cabinet responsibility would endanger the independence of the States.

The union of the legislative and executive departments would increase the aggregate force of the federal government, — would increase its power to accomplish its purposes, and would enable it with much greater ease to encroach on the authority of the States if it should desire to do so. . . . I mean to say that national questions would constantly assume an importance in the eyes of the people, which would entirely overshadow local interests, and that a responsible ministry, armed with the power of public opinion, would bring to bear upon the States a steady pressure which they would be unable to resist.¹

But suppose a corresponding machinery is provided in the States to resist that pressure. That the federal gov-

¹ "Essays on Government," pp. 37, 38.

ernment has already encroached materially upon those of the States Mr. Lowell admits even while attempting to deny it.

The fact appears to be that although the United States has largely increased its authority, the government has not become centralized to such an extent as to upset the balance of power, or even to disturb seriously the equilibrium of the system.¹

The cause of this encroachment we take to be the strength of the federal administrative organization as against the weak and distracted force of the States. That strength would no doubt be greatly increased by establishing contact and coöperation between legislature and executive, but on the other hand there would be a double gain in the States by introducing at once the already existing federal organization and the new combination of motive power. A concert of action, and of decided action, between a number of States might well hold the federal power in check, even if it did not throw the balance the other way, of which the danger, however, does not seem to be imminent.

The next topic to be considered in connection with responsible government is its effect upon legislation. We have already discussed ² the processes and effects of existing methods. Even if the intervention of the executive was limited at the outset to the recommendations of the Senate report, so slightly regarded by Dr. Snow, it could not fail to direct the attention of the people of the State to the evil and absurdity of these methods, and so take one step towards reform. But it evidently could not stop there. From the necessities of its position, and to satisfy public expectation, the executive would be obliged to have a programme ready at the opening of the session, and to demand attention for it. For the same reasons it

¹ p. 51.

² See Chap. XXII.

would be compelled to keep an eye on all subsequent proposals, and to see that they did not conflict with existing laws or with the necessities of administration. The mere saving of time and trouble would suggest that this should be done before and not after the work of a committee, and the first reading of a bill would turn upon the question whether it should be received at all.

The main object of executive guidance of legislation is that it should be ordered with reference to the public interest as a whole, and to the requirements of administration. The absence of such guidance makes it, with very little reference to those considerations, the result of private interests, of political intrigue, and at the very best of a crude and incoherent empiricism. The one leads it under a combined system to a definite end, the other drives it by explosive forces in wholly uncertain directions.

By this means and this only can the power of the lobby be successfully eliminated. That power means the procuring of a majority of separate and equal units whether in a committee or a legislature, whether in one house or two, hesitating, uncertain, distrustful of each other, and without any central rallying point, by persuasion, personal solicitation, intrigue, and sooner or later by bribery, direct or indirect. A system under which every law had to undergo the public approval of an executive official, placed at the head of the department to which it referred, responsible to the governor, and through him to the people of the State, and open to public debate and question by any member of the legislature, would speedily put an end to lobbying, at least in its worst form. And the same would be true of that other instrument of corruption, — log-rolling, or trading between members. Lobbying or log-rolling with the executive itself, now only excluded by what in other States at least has proved to be a broken reed, that is, per-

sonal honor, would be so dangerous and fatal when the least suspicion brought down a fire of questions in open legislature that it need not be taken into account.

The immense volume and the incoherent and often contradictory character of the annual legislation; the prevalence of special as against general legislation; the failure of the laws to produce desired results; the length of sessions and the absence of effective debate,—have been already discussed.¹ These things will never be remedied by less frequent elections, or—as to the quality if not the quantity of lawmaking—by less frequent sessions. They cannot be reached either by proportional representation or by referendum, by general ticket or cumulative voting, by the Australian ballot or by exhortation to the people to attend the primaries. The only resource is in systematic procedure, with personal and public responsibility, which again can only be obtained through official leadership in the executive branch.

It may be and is objected that such an arrangement would be an infringement of the cherished right of petition and that members would be cut off from proposing measures desired by their constituents. It is urged that in the British Parliament it is almost impossible to find any place for private bills; and that even public ones are wholly in the hands of the ministry, so that nothing can receive attention but what they choose to submit. It must be observed, however, that the British government has to deal on one hand with imperial affairs, including complex questions all over the world, and on the other with minute details of local business. Our State governments have really nothing but internal affairs to attend to, being still further relieved by greater local organization, and have more time to consider specific propositions. The complaint here made contains no doubt some truth, but in the

¹ See Chap. XXII.

first place the change would compel the legislature to rely more upon general and less upon special legislation, leaving the latter to local application; secondly, it would enable each legislature by beginning work promptly to do more in the same length of session; and thirdly, it would furnish, what is greatly needed, security to existing interests and social conditions against rash experiments set on foot by every theorist, schemer, or seeker after gain, who has ingenuity and determination enough to lobby or log-roll them through the legislature. An agency for preventing legislation is at present quite as needful as one for promoting it; and a system which should reduce the yearly statutes to one quarter of their present volume and make sure that they were well digested, coherent, and based upon definite policy, might well compensate for the loss of some chance shots, which in the present haphazard blundering may be found to work for good. It is quite certain, moreover, that any measure or principle which by agitation and discussion had secured the support of public opinion, would find the executive more than ready to mould it into shape and submit it for legislative consideration.

The chronic jealousy of executive power has suggested that there should be a general committee of the legislature for sifting and testing all proposals for laws. But besides that no committee can have the element of personality appealing to the whole people, no committee can be responsible for the adjustment of law to the requirements of administration.

The third subject of inquiry as to the effect of the proposed measure within the State relates to the character of the men in public life. Of course the governor presents himself first. It is evident that our governors, if not of a different class of men, must manifest very different qualities from any which we have hitherto seen. The

governor's function now consists in attending on festival occasions and making speeches laudatory of the State, its people, and its institutions; in offering paternal advice to the legislature when it assembles; in signing such bills as that body may see fit to send him, subject to occasional recalcitration when they are more than usually objectionable; in appointing, with the approval of a majority of nine other men, the members of the commissions, over whom after they are once appointed he has practically no further control; and finally, and what perhaps is really the most important thing he has to do, and in which Massachusetts stands preëminent above the other States, in appointing judges, still with the consent of a majority of nine other men.

Compare with this functionary a governor, still elected by the people, but as the actual head of an administrative organization reaching into every department of the government; having the appointment, direction, and removal of every subordinate; bound to see that all their plans and conditions of work were ready in due time for the inspection and criticism of the legislature, and that all were so far in harmony that they could be treated as a whole; to take care that every one of these subordinates was of such character and efficiency that at least no scandals should arise; that the heads of all the departments should be competent to explain and defend before the legislature and the people the conduct of each, coming himself in an emergency to their assistance, and again, if need be, replacing a defective member; and most difficult of all, in the case of an opposing majority in one or both houses, to tide along the necessary business, keeping burning questions in a state of suspended animation, till the people threw their support on one side or the other at the elections.

There are such men to be found. There are many of

them to-day conducting business enterprises of at least equal difficulty. The process of discovering them should be, as in those business enterprises, one of evolution, which in public life is now impossible. A cabinet officer, who could show himself a master not only of his department but of the conduct of government, a member of the legislature vigorous in criticism and clear in pointing out policies which ought to be pursued, would furnish better methods for popular selection than a nominating convention, picking out citizens at random.

The objection most certain to be encountered is the danger of putting so much power in the governor's hands, and as this is the kernel of the whole matter it deserves careful consideration. We have argued that government by a legislature means anarchy and that anarchy leads surely to despotism. Cromwell and the Napoleons were cited as to England and France. The United States have advanced far on the road to anarchy, and unless some check is placed on the rule of the legislatures the result is certain. Indeed it has already come. The despotism of Richard Croker in New York will hardly admit of question.¹ The rule of Mr. Platt in the New York legislature has been already described,² and his displacement will only change the person and not the system.

A remarkable illustration has occurred in Pennsylvania in 1898. The forty years of rule of the State by the Camerons, father and son, have passed into the hands of Hon. Matthew S. Quay,³ himself a United States senator, but who, as leader of the Republican party, has disposed of all the State offices. In 1898 a revolt broke out against

¹ Since Napoleon left Elba to resume the sovereignty of France, what parallel is there in history to the case of Mr. Croker, who, after sojourning in England for three years, returns and resumes in a moment the mastery of New York? — *Evening Post*, January 13, 1898, quoted from an English paper.

² See Chap. XXIII.

³ See Appendix E.

him, headed by Hon. John Wanamaker, a rich tradesman, and Postmaster-General under President Harrison.

At a crowded meeting in Lancaster on March 16 one speaker, a prominent citizen, said:—

It is often a question to me whether we live in a republic or under a monarchy. One hundred and twenty-two years ago we threw off the yoke of King George, but to-day we find the yoke of King Matthew more unbearable. If the people of the State knew their strength and their power, now is the time to dethrone King Matthew First.

They cannot do that without a leader and they have none.

Mr. Wanamaker made a most bitter attack upon the State government, charging every kind of falsehood, corruption, and robbery under the despotic control of Mr. Quay and his lieutenant, Mr. W. H. Andrews. The details need not be given here, but they show how, under the forms of free government, a dictatorship of one man can be fully established. The curious part is in Mr. Wanamaker's conclusion.

This does not mean that we take down our Republican flag and put up an Independent flag. . . . I am a Republican of Republicans, and from my boyhood to this day I have never voted any other ticket. Neither have I scratched or bolted it. . . . I accepted a call asking me to be a candidate of the Republican party before the Republican Convention. . . . If I had wanted to be an Independent candidate I would have waited till the party leaders clinched themselves beyond recall at the Convention, and then I could have announced myself. I am not a party wrecker.

That is to say, if an impersonal party convention, calling itself Republican and manipulated by Mr. Quay, nominated Mr. Quay's man, then Mr. Wanamaker proposed to fall into line and to vote for and support the Republican ticket. If he did not go so far as that, he did not commit himself to any other candidate. Reform is not likely to go very far on that basis.

A new element, however, appeared upon the scene. The Rev. Dr. Silas C. Swallow of Harrisburg was editor of the *Pennsylvania Methodist*. In 1895 he began an unsparing attack upon the State authorities with positive charges of corruption and crime. Indicted for criminal libel on half a dozen counts, he conducted the case himself, scoring all his antagonists from the judge down. He was fined \$500 and costs and from that moment his popularity made him a Reform leader. In 1897 he became a candidate for state treasurer of the Prohibition party, of which the normal vote in the State is about 25,000. To the surprise of everybody he secured 119,000 votes out of 734,000, and more than the Democratic candidate. In 1898 he accepted an independent nomination for the governorship upon a simple platform, "Thou shalt not steal," and proposed to stump the State. He has powerful backers and if his tact is equal to his energy he may succeed in being elected.

Suppose he is. His training as Methodist minister and editor can hardly have fitted him to play the part of a statesman, however competent he may be to denounce glaring and obvious evils. He will find himself confronted by the powerful political machinery we have described, having himself no power to do anything, but subjected to the domination of a hostile legislature, baffling, tripping, and humiliating him at every turn, till after a year he falls out and disappears as a charlatan and a failure, and the astute Mr. Quay or his successor becomes more firmly seated than ever, with a still tighter hold on the political machine.¹

¹ The result of the election is of deep interest. Dr. Swallow passed six months in canvassing the State, visiting all of the sixty-seven counties except four, and many of them several times; and made some two hundred and fifty addresses. Mr. Wanamaker gave as much time, traversing the State with vigorous and searching exposition of fraud and corruption in the State government. The vote for governor stood as follows:—

The lesson of all this is that the one man power is before us beyond the possibility of escape, and whether we like it or not. The people, weary and disgusted with caucus nominations, with impersonal committees, commissions, and legislatures, are hungering and thirsting for men, for leaders whom they can follow. If they cannot have good

Stone, Republican and Quay	473,068
Jenks, Democrat, and promising reform	353,742
Swallow, Independent, and honest government . .	132,006

What does this prove as to the character and wishes of the people ?

An eye-witness who accompanied Dr. Swallow in a part of his campaign, reported crowded audiences and great enthusiasm, and predicted success. That only shows how easily the demonstrative part may be mistaken for the whole people, and how difficult it is to get at the great mass.

Again, while Dr. Swallow and Mr. Wanamaker both denounced existing evils, they proposed nothing in the way of remedy. Negatives are not sufficient to arouse effective enthusiasm.

Thirdly. While Dr. Swallow had excited enthusiasm by his courageous stand for the right, he had no personal record to appeal to. A Methodist preacher and editor of a religious paper, with no political experience, and no definite policy to offer, could hardly expect a conservative population to hand over to him the government of the State.

Fourthly. Party loyalty must be taken into account. In the absence of adequate personality, party names form the strongest bond of union ; and the word Republican has in Pennsylvania almost a religious authority. It represents not only the memories of the civil war, but the policy of high tariff, to which rightly or wrongly the State is believed to owe its prosperity. The people can see but little to choose between party politicians, and so cling to one idea. No single and spasmodic effort can reduce such a fortress as that. Nothing but personality, trained and tried by years of experience, perfectly known to the people, and thoroughly identified with the government, can overcome the "boss" power which controls such a machine.

Fifthly. The successful candidate still represents a minority. When so much is at stake, only a majority, and no lesser fraction, whether large or small, should rule. The people should not be allowed to be led astray by false hopes. A second election, at whatever cost or trouble, should compel them to face squarely the main issue.

Great stress is laid upon the false counting of votes and bribery. While there is undoubtedly much ground for this charge, it is too indefinite for conclusive argument. In one of Mr. Wanamaker's speeches (see Appendix E) is given an account of the offices, national, State, and city, which are under the control of the Quay machine, and the enormous

ones they will take bad ones. The only choice open is whether they shall be provided with leaders, trained and tested as to character and ability, or whether by resolute resistance to their demands they shall be driven into the arms of reckless and irresponsible demagogues, abusing their enthusiasm for selfish purposes. It is precisely the evolution of leaders which is the main object of admitting executive officials to the floor of legislatures; and not merely in its effect upon themselves but upon the members as a whole. Instead of being nominated and elected as lay figures, labelled Republican or Democrat, they would become individuals, visible to their constituents and the State by supporting or criticising men, measures, and policies.

This improvement in the quality of members of the legislature and in the considerations on which they are elected would operate in one direction, where it is perhaps more needed than anywhere else in the country, and that is, in the Senate of the United States. It is not an exaggeration to say that there is no one of our institutions which has caused more dismay and mortification to every self-respecting citizen, anxious not only for the welfare of his country, but for its appearance in the eyes of the world, than the conduct of that body in the last five years. It seems as if even the conservative and dignified members

amounts of money thereby placed at its disposal. In the control of the public press, the employment of workers, and the direct bribery of voters, it is evident how much can be accomplished by such means. Yet the figures of the election show that it might not avail, especially with a majority requirement, against a fully aroused moral sense of the people. Whether this could be brought about by such a personality as has been described may be open to question, but it is certain that under present conditions of our public life the experiment never has been and never can be tried.

Notwithstanding the adverse appearance of the Pennsylvania election, we maintain that it involves no condemnation of the character or intentions of the voters of the State. It only proves that they have not been appealed to in the right and effective way.

had lost all power of resistance, and as no chain is stronger than its weakest link, so the attitude of the whole Senate is governed by the most violent and reckless forces. Yet the explanation of these things, as has been already indicated, is very simple. The senators are elected by the State legislatures, and the Senate will be in a higher degree what the State legislatures are. It is notorious how these legislatures—to make the remark fit for home consumption we will say outside of Massachusetts—are jobbed and lobbied and log-rolled. When some arch-intriguer, or, according to the popular phrase, ‘boss,’ by a combination of schemes equally ingenious in contrivance and masterly in manipulation, has obtained control of the majority of a legislature, the reward and distinction which he covets are a seat in the United States Senate, where he remains impregnably intrenched till his superior in his own arts comes to dislodge him. If the Senate was not what it already is, it would be easy to predict what at no distant day it is certain to become.

State legislatures in which business was done with order and system and in public view; in which a responsible executive and a watchful body of members kept public opinion interested and informed both as to men and measures; in which members won their places by their attitude and action in public affairs, and in which senators themselves were exposed to constant discussion and criticism; such legislatures would soon begin to modify the character of the United States Senate.

There is another point of view which shows the wonderful adaptation of the original Constitution to the necessities of the case. The structure of the Senate was devised to satisfy the demand for independence of the separate States, large and small. We have elsewhere dwelt upon the growing tendency of the centralization of power in Washington since the Civil War, a tendency which has

been powerfully promoted by the weakness of the State governments, by the steady absorption of State in national politics, and by the course of the Spanish war. If this is not to go on until the States as separate political units are completely wiped out and the whole country is administered from Washington as thoroughly as France from Paris, the representation of the States as such in the Senate was never more needed than now. If the Senate was elected by popular vote it would not be extravagant to say that in twenty-five years the States would become in relation to the federal government little more than the counties now are to the States.

Again, great complaint is made that States with a scanty population like Nevada and Utah have just as much power in the Senate as great States like Pennsylvania and New York. But the reputation of the one class has certainly not been more discreditable of late years than that of the other, while if the thickly settled States would combine for the manifest common interests of their people they would have no difficulty in holding the balance of power. The shortcomings of the Senate are not, at least to any preponderant degree, chargeable to the new States.

The danger from concentration of power in the executive under the proposed system would be much less than it is now. The examples of New York, Pennsylvania, and other States — in Massachusetts the danger has been escaped through the high character of the men — show that collusion and intrigue between the governors and members of the legislature or outside parties may lead to any amount of corruption and betrayal of the public interest. On the other hand, a governor, who by himself or his agents was exposed to public and daily cross-examination by members eager for distinction, would find it impossible to carry on any negotiations which could not bear the full

light of day and which, moreover, would risk almost certain exposure from their very inception.

Even the absolute power of appointment and removal of all officials would be entirely free from danger with the safeguard of such unrelaxing test machinery as that. It is very much safer to try men by a constant criticism of their work after they are appointed than to make that appointment dependent upon some third person or body, and then leave them to carry on their work without effective supervision. The absence of personality in the commissions tells in the same direction. Thus far, by what seems almost a miracle, they have for the most part been made up of men of high character and who have done good work. But if corruption does creep in among them—and the temptation and the opportunity are tremendous—it will bring into stronger light the anarchy, the impotence, and the greed of power of the legislature, while the exasperation and disgust of the people will drive them towards acquiescence in the rule of one man, whether he be good or bad.

Passing to the next item, we shall find that the effect upon the voters would be quite as great and important as upon public men. It is only necessary to read the regular party platform to see how perfectly colorless politics are now; how they rest upon a set of abstract and general platitudes, framed to attract the largest and repel the smallest possible number of voters; how completely the element of personality is eliminated, or if mentioned at all, upon considerations as abstract and irrelevant as the platform itself. And then set over against this that thirst for personality which we have so constantly insisted upon as one of the strongest elements of human nature. As already observed, it is a matter of the commonest observation in the case of actors, singers, clergymen, orators, authors, that it is always the individual who draws the

crowd. In a popular government the first thing is to get at the wish of the people and precisely of the class which, having no direct interest, is least disposed to take an active share in politics. It is of no use to scold at them because they will not take the trouble to decide between two or more sets of men whom they have never seen and of whom they know nothing; as to which of them they will constitute the uncontrolled managers of public affairs, of which they know if possible even less than of the men. The people must be drawn and not driven. If the masses are expected to take an interest in politics, politics must first be made picturesque.

Suppose the public business to be taken out of the secrecy of the committee rooms and brought into the open arena of debate, with leaders on both sides and an order of procedure which would give scope for individual ability. There would be a small, perhaps a very small, number of voters who would follow both the details and the principles involved, dividing, according to their constitutional dispositions, into conservatives and progressives. Yet even these would have a feeling of sympathy or repulsion towards the men with whom the views were identified. Next would come a somewhat larger class, with whom the business occupied a rather less and the men a rather larger share of attention; and so on till finally the largest class was reached, for whom the measures would have very little of interest and the men a very great deal. Yet between both extremes the men would form a common bond of sympathy. Instead of indignation on the part of the first class that the others would not share their views, and frantic and more and more hopeless efforts to arouse them to action, the former would resort to the more available method, satisfied if they could forward desired measures by an agreement as to men; while all would feel increased confidence and courage, by finding that they could work

together and obtain mutual support, instead of as now drifting wider and wider apart.

Every time that a man of high character and ability achieved success, and every time that a weak and dishonest man was dismissed to obscurity, the moral tone and character of the whole people would be distinctly raised. The force of education would be brought to bear upon politics, while politics would in turn develop education. Government would not only rise to the level of the people, but would itself steadily raise that level. We should then reach those calm and profound depths of public opinion which remain unstirred by the noise of faction or the squabbles of party manipulations. The force, mightier than steam or electricity, could at last be looked to to produce adequate results through appropriate machinery.

We have endeavored to show that the difficulties of government in the Union and the several States are the same in principle, — the preponderance of the legislature and the depression of the executive; and that the remedy must be sought in the same direction. The obstacle to its application in the federal government is found in the vast area included, the variety of population and interests represented, and the task of propagandism on such a scale. In the States it arises from the indifference with which their governments are regarded and the apparent ignorance that any principles are involved. In the federal government the executive, for the reason already stated, is a positive and visible power. In the States it is so far reduced by the system of separate election, that there seems to be no consciousness of its existence for any purpose except being elected.

Nevertheless it seems as if in the States, if at all, the change must be brought about; that the compactness of the territory, which yet contains so many important problems, and the nearness to the people would make them the

easiest of attack. Of course, there is a great difference among the States. The more crowded Eastern States, with their commercial and manufacturing life, present different conditions from the agricultural and more sparsely settled South or the sanguine and elastic West. It is in the latter that material innovations most readily take their rise, but it seems as if for reforms of government history and tradition point to New England and especially to Massachusetts.

The drawback is that the evils of the existing system are perhaps less felt there than in any other State, owing first, no doubt, to the character of the men in public life, but behind that to the qualities of the people who place them there. Conservatism is, moreover, as strongly rooted there as in any other State. Massachusetts is second to none, however, in the intelligence of her people and their readiness to respond to moral influences. First in political as well as physical resistance to Great Britain in the War of Independence, it was in Massachusetts also that the antislavery movement took its rise, and from her soil went forth the first regiment in the Civil War. Hardly less characteristic was the popular response to the appeal in 1896, when, by a large majority and almost alone among the States, she rejected what would have been almost giving up her separate existence, — the biennial amendment to the Constitution, proposing the suppression of all State elections separate from the national.

Assuming the contention of this work to be well grounded and the consequences to flow from the principles therein laid down, could there be a nobler addition to the laurels that already grace her history than to enter on a field of experiment, which if it leads to nothing could do no harm, and if it succeeded would furnish a model for imitation by the other States and the federal government? We may quote the saying of the Englishman Bagehot

that "if the New England States as a separate nation had cabinet government, they would be as renowned in the world for political sagacity as they now are for diffused happiness."

The idea is not a new one even in Massachusetts. In an address to the legislature on the 6th of January, 1881, — one month before the United States Senate report was presented, — Hon. John D. Long, then governor of the State, said: —

Speaking of these officials [the elective heads of departments], I recommend that you give them seats in the legislature, with the right to speak upon questions affecting their department, but of course without the right to vote. This could not but aid legislation.

And again on January 5, 1882: —

I still am convinced of the advantage and economy of an executive council, composed of the elective heads of departments, rather than as now constituted, and of giving them seats in the legislature with no vote, but with the right to speak upon questions affecting their departments.

Moreover, in the General Statutes of 1849 there is a clause to the following effect: —

The attorney-general shall, when required by either branch of the legislature, attend during their sessions and give his aid and advice in the arrangement and preparation of legislative documents and business; and shall give his opinion upon questions of law submitted to him by either branch thereof or by the governor and council.¹

No result has followed from this, first, because no elective department official would be at all anxious to avail himself of it, and again, because he could attend only at the request of the legislature, and the legislature, even in those primitive days, was certain not to request anything of the kind.

It is evident that to give this measure any effect the department officials must first be made appointive by the

¹ Chap. 186, § 6.

governor, that is, selected by him for this special work, in harmony with him and with each other, and able to look to him for support in case of a disagreement with the houses. For the rest, the State legislature, as well as the national Congress, firmly believes that the government is, and should be, vested in itself alone, and that the executive is merely an instrument for carrying out its orders. It will never take the initiative in, nor will it ever give any support, until compelled to do so, to any scheme for a division of power or for enabling the executive to enforce responsibility to the people upon itself. Nor does it wish any more to enforce responsibility on the part of the executive to the people, very much preferring responsibility to itself alone, which is more easily obtained by private negotiation and party pressure.

The change must come, if it ever does come, through some candidate for the governorship carrying his demand directly to the people, explaining his case to them and asking for their support. Nor are the first notes wanting of this direct issue between the governor and the legislature. In January, 1891, Hon. William E. Russell entered upon three years of the governorship. We quote from his annual messages *in extenso* the following passages for their important bearing upon the subject.

From his address to the legislature, January 8, 1891: —

I commend to your consideration the State system of administrative and executive work. With much truth Massachusetts has been described as a commission-governed State. Its great departments of education, health, charities, prisons, reform schools, almshouses and workhouses, agriculture, railroads, insurance, fisheries, harbors and lands, savings banks and others, are governed by independent boards, practically beyond the control of the people. Beside these there are commissions on gas, pharmacy, dentistry, civil service, arbitration, cattle, wrecks, pilots, State aid, and others, for special and temporary purposes. Almost without exception the members of these boards are appointed by the governor, but only with the advice and consent of nine other men. Their tenure of office is usually for a term of

several years, often without power of removal by any one, sometimes subject to removal for cause or otherwise by the governor, with the same consent. The latter power in effect necessitates a trial upon formal charges, which seldom would be made or could be proved except for flagrant malfeasance in office.

The subordinate officials are generally appointed by the boards. These boards and their work are practically beyond the control of the people, or of any one immediately responsible to them, except in the limited power of the governor occasionally to appoint a single member. The people of the State might have a most decided opinion about the management and work of these departments, and give emphatic expression to that opinion, and yet be unable to control their action. The system gives great power without proper responsibility, and tends to remove the people's government from the people's control. The head of the executive departments of the State, elected by the people, and directly responsible to them, has but little power and few duties, except social and perfunctory. I make this criticism on the system with full knowledge that as a rule the work of these boards has been excellent and their members faithful public servants. But Massachusetts may not be always so fortunate. Is it not far safer to rely upon a sound system than on the chance that a defective system may be made to work well by good officials?

I submit that the first essential of sound administration is to couple power with responsibility by making it subject to the people's control. Speaking of this necessity, one of the ablest and most experienced public officials, Mr. Seth Low, has said: "Power without responsibility is always dangerous, but power with responsibility to a constituency, which can readily call it to account, is not dangerous. It is the first requisite of efficient administration."

And then follow some suggestions of remedy. Note that the system was then on a scale almost insignificant, compared with what it has since become.

From his address to the legislature, January 7, 1892:—

In my judgment, the time has come when the attention of the legislature ought to be directed to the executive branch of our government, to the great increase of its duties, the lack of uniformity or system in the organization created for their discharge, and its entire absence of responsibility, except in the high character and conscientiousness of officials in its various departments. My criticism is not of officials, but of a system; and the test of that system is not the faithful work they have done, but the unfaithful work others might do without adequate responsibility to call them to account. If danger

lurk in the system, if it can permit arbitrary acts without control, misconduct without correction, or official administration without responsibility, it is wrong.

From his address to the legislature, January 5, 1893:—

Of these recommendations, I believe the most important is the reform of existing machinery for the discharge of executive duty,—machinery now without system and destructive of that executive responsibility and supervision which the constitution devolves upon the governor, and for the proper exercise of which it meant to make him at all times amenable to the people. I have heretofore so fully considered this subject, and stated the facts and arguments upon which I based an earnest recommendation for radical changes, that I need now but briefly refer to them. . . .

Another year of public discussion of this important State question, with past experience as an object lesson, has, on the direct appeal to the people, shown distinctly, I believe, their dissatisfaction and demand for a change. They mean that the executive head of the Commonwealth, their servant, shall be in fact as in name the supreme executive magistrate, always and solely responsible to them, and that he shall have all powers commensurate with such responsibility. They repudiate a system which devolves executive duties, for which he is and ought to be held responsible, upon bodies over which he has little or no control or influence.

It is instructive to note the way in which these messages were received by the legislature. The report of a joint special committee, which in March, 1892, dismissed the subject, contains the following:—

The following order was adopted by the General Court of 1891:—

Ordered, That a joint special committee be appointed to consist of two members on the part of the Senate and five members on the part of the House of Representatives, to sit during the recess and examine into the various commissions of the Commonwealth charged with the administration of State affairs, hear such evidence as may be submitted, after public notice of the time and place of the committee's meeting, and consider the manner of organization and administration of said commission; what, if any, changes are advisable or necessary therein; and whether any of the existing commissions can be consolidated with others or can be entirely abolished without detriment to the public interest; and, if any of such commissions can be so consolidated or abolished, to consider by whom and in what manner the duties now

performed by such commissions, or any of them, shall be hereafter discharged.

Not the slightest reference here to any wish or protest of the governor. The report continues:—

The committee has held nineteen public hearings, has duly advertised the place and time thereof, and heard all the evidence submitted to it. The attendance of members of the different State boards and commissions was requested, and, with a few minor exceptions, representatives of the various boards and commissions were heard and examined concerning the organization, powers, duties, and necessities of their respective offices and commissions, and the manner in which the duties assigned them were discharged.

In other words, the only witnesses summoned or heard by the committee were parties interested in the maintenance of the system complained of. The present writer, having, at the personal request of the governor, appeared before the committee, was asked what changes in the commissions he proposed to advocate. When he replied that he proposed to advocate their abolition the committee refused to listen. Being asked to refer to the order under which they were appointed, and finding that it directed them to consider the abolition, they settled down with dogged looks, as if they might be compelled to listen, but could not be compelled to hear. It may be asked why the governor did not himself present his case. The committee represented on the part of the House $\frac{5}{24}$, and on that of the Senate $\frac{2}{4}$ of the State. The members had little, if any, experience of executive work, and were in no way directly responsible for administration. The governor represents a constituency as large as that of the whole House or the whole Senate. He is at least the nominal head of the whole State administration, and nominally, though in point of fact not at all, responsible for it. He would be wanting to the dignity of his office and unfaithful to his constituents if he appeared as a suppliant

before such a committee as that. If he has anything to say, he is entitled to be heard by the whole, at least, of each house at a time, so that he may, in fact, be addressing the whole State. To return to the report:—

The system of decreasing legislative work by transferring or delegating certain specified powers, originally belonging to and generally exercised by the legislature itself, to boards or commissions, composed usually of more than one person, has, by successive legislative enactment, become ingrafted upon the political policy of Massachusetts.

That is, the legislature has taken upon itself to fix the extent of its own powers, and to dispose of them as it pleases.

Many of the existing commissions are charged with duties varied and delicate in their character; to the decisions of the members are submitted questions of expediency, of policy, and of management, affecting large financial and business interests, the solution of which requires the careful consideration and intelligent action of men of ability and extended experience.

If that is not a definition of executive work, the dictionaries need to be revised.

Few, if any, of the commissions exercise purely executive power; nearly all are called upon to decide questions involving public or conflicting personal rights, requiring the exercise of sound discretion and judgment. Abolish these commissions and nearly every question now submitted to their decision would revert to the legislature from which it came rather than to the executive chamber. This best defines the character of the work with which most of our commissions are charged.

The committee then take up the commissions separately, describing, with utter disregard of facts, their duties as not executive, and discussing only whether their organization should be changed. Upon this report made by these seven men, the legislature passed over in silence and without even acknowledgment three urgent appeals of the executive as to the most important element of State administration.

It may be worth while to quote one sample among many of the style employed towards the governor:—

Power brings responsibility, but absolute unbridled power is also apt to bring abuses in its train; and while the theory of accountability to the people is invoked as a barrier to such abuse, history has demonstrated that a leader, capable of subverting the functions of his office to the dictates of personal aggrandizement, is capable of using the very privilege granted him by the people to perpetuate his reign and pollute alike their government and the sources of political power.

Such is the language which this committee permits itself to use with reference to the man whom the people of the whole State have chosen to be their chief magistrate for a year, and who cannot command a dollar nor a policeman without the consent of the legislature. Observe, moreover, that this is not a party document. It is signed, except as to one small detail, by Democrats equally with Republicans, and the whole legislature, by accepting it without a protest, endorses it. It is the case of the legislature *versus* the executive — who submits in silence.

In spite of urgent solicitations Governor Russell declined to take the case to the people, partly, no doubt, from his youth and partly because he had not fully thought out the policy to be pursued; for it will be observed that he had merely protested against the existing situation and did not propose the appointment instead of election of the leading State officials, nor, like Governor Long, that they should have seats in the legislature. It is a strong indication of the state of popular feeling that, being the only Democratic governor with two exceptions, each of a year, since 1850, he was elected three times successively, and the last time in a presidential year, when not only the vote for President but for every other State office was overwhelmingly Republican. He has at least put forward the direct issue and it is now awaiting the next hand. It is our firm belief that the man who has the courage to place it squarely before the people and the ability to carry it to fruition will leave a name second to none in the history of Massachusetts.

CHAPTER XXXIII

THE EXECUTIVE IN THE CITY

THE subject of city government has already been discussed¹ in relation to the principles here laid down, but it may be made clearer by more systematic examination. The constitution of a State is supposed to deal with a few general principles, the conduct of government depending upon ordinary legislation. A city charter, on the other hand, in all its details is based upon the authority of the State government, which should be expressed in general municipal laws. It is pertinent, therefore, to consider what such a law should be, in order to obtain the best results. We propose to draw up the plan of a charter and then discuss it in detail.

1. ELECTIONS

The voters should be called upon, except as hereinafter provided, for two and only two expressions of their will, — the election of a mayor and of one member of the city council. All elections should be decided by a majority of the votes cast. If no candidate has such a majority, then a second election should be held between the two candidates having the greatest number of votes on the first ballot. In case of a tie between these the result should be decided either by lot or by the vote of the actual incumbent of the office. (a)²

¹ See Chaps. XXIV., XXV.

² These letters refer to the later discussion of the plan proposed.

2. THE EXECUTIVE, THE MAYOR

The mayor shall be elected annually, on a different day from the State and national elections, by all the qualified voters of the city, voting in their respective precincts and under the conditions already stated.

The whole executive power of the city shall be vested in the mayor and he shall be responsible for the same. He shall have full power of appointment and removal of every executive officer and notably of the following departments:—

1. Law: City Solicitor and subordinate officials,
2. A Commissioner of Finance,
3. A Commissioner of Education,
4. A Commissioner of Police,
5. A Commissioner of Public Institutions,
6. A Commissioner of Public Buildings,
7. A Commissioner of Health,
8. A Commissioner of Highways,
9. A Commissioner of Charities,
10. A Commissioner of Elections,

and shall also fill all other executive offices, created by the council, under conditions hereinafter named. All subordinate officials shall be appointed and removed by the department heads, subject to the approval of the mayor.

The mayor may at any time be deposed from office by a vote of three-quarters of the council, but in that case a new election shall be simultaneously ordered and shall take place not more than ten days later under the conditions named above. In such elections the removed mayor may be eligible as a candidate. A new election shall in the same way be ordered if the mayor resigns of his own accord.(b)

3. THE COUNCIL

The city shall be divided into wards, containing each, as near as may be, an equal proportionate part of the whole population of the city, and this geographical division shall be permanently maintained. Each ward shall be divided into precincts,¹ each electing a single member by majority vote as provided above. If at any time a ward shall increase in population, so as to have a fraction more than one-half of that required for a member, then it shall be given another member, with a redivision of precincts by the executive under conditions herein provided. If any ward shall lose population by a fraction more than one-half of that required for a member, it shall be deprived of one, with a redivision of precincts. Any precinct may by any part of its inhabitants invite a resident of any other part of the city to become a candidate.(c)

The council, at its first meeting in each year, shall choose by majority vote from its own number a presiding officer, whose duty it shall be to preserve order, to conduct debate and procedure as to form, and to enforce the rules as established by the charter or by the council. He shall have no vote except a casting vote in case of a tie. The council shall also at its first meeting choose singly and by majority vote three members of a committee, renewable every month, whose duty it shall be to nominate the members of any committee of inquiry which may be ordered as herein provided.(d) The council shall also establish its own rules of procedure, except so far as herein otherwise provided. Ties in the case of these elections shall after three ballots be decided by lot.

The regular meetings of the council shall take place on

¹ That is, Boston, with twenty-five wards and five hundred thousand inhabitants, should have four precincts for each ward, returning one hundred members in all.

the first Monday of every month and may be continued by adjournment from day to day. Special meetings may be called by the mayor at any time upon one week's notice and shall be so called upon the written demand of any ten members.(e)

Committees of inquiry into any branch of executive administration may be appointed by the council at any time, its members being selected by the nominating committee as above and approved separately by vote of the council. Said committees shall have power, the consent of the mayor or head of the special department, in general or as to details, being first obtained, to send for persons and papers to come before them as a body, but without power to make personal investigation within the departments. They shall also have power to summon persons and papers from outside parties, and, under lawful conditions, to compel testimony. Said committees shall make a report to the council, but no vote of condemnation shall be passed until the head of the department concerned shall have been heard in public session as to the tenor of the report. A vote may then take the form of an address to the mayor to remove the head of the department or the accused subordinate. A refusal may be met by deposition of the mayor and appeal to the people as provided above. The accused official, whether then or subsequently removed, shall be open to criminal process on the part of the council.(f)

4. SEPARATION OF POWERS

The mayor and the heads of departments, as above, shall have, *ex officio*, seats without votes in the council and shall be present at its meetings whenever they so desire, or whenever they are requested to do so by any five members of the council and by notice given publicly at a previous meeting or privately in writing at any time. They shall

have the right to speak and the duty of giving information on any subject relating to their respective departments, in substantial accordance with the recommendation of the United States Senate report already quoted. The first hour of every session, or so much of it as may be desired, shall be given up to questions addressed to the executive officials under the conditions named in that report.(g)

Every measure or ordinance relating to the general public interest, and involving executive action, shall be laid before the council by the executive branch alone, and primarily by the head of the department specially concerned, as decided by the mayor. No member of the council shall be permitted to introduce any such measure or ordinance, nor shall any such be considered otherwise than as above. *Provided*, however, that any member may submit a resolution, requesting the executive to bring forward a measure for any purpose, and if such resolution shall pass by a majority vote, the executive shall either accept and agree to comply with it at the earliest possible date, or shall give reasons for refusing to do so, which refusal shall be final until the next election. On the other hand, if any measure proposed by the executive shall be rejected by the council, such measure shall not be taken up again before the next election, unless some member shall move and obtain a majority vote for taking it again into consideration.

Any member of the council may propose measures of private or special interest, in which the public interest does not appear to be particularly involved, and the council may grant leave for its introduction; but such proposal shall not be made or debated, unless in the presence of the mayor or a head of department most directly concerned, and either of these may demand a postponement of its consideration until the next meeting, and shall either then or at the next meeting state the objections, if any, to the proposed measure and the reasons for such objection from

the point of view of the public interest, and such objection shall be final. If no objection is made the measure may pass by the usual procedure, but at any subsequent stage executive objection may be interposed and explained and shall then be final.(h)

Every bill or measure shall have three readings, separated by at least twenty-four hours, and separately voted upon, unless urgency, declared by the majority of the council and accepted by the executive, shall authorize an immediate vote. The first reading shall decide whether or not the principle of the bill is approved; the second, whether the bill as a whole is suited to the application of the principle; the third shall be devoted to a discussion of details and amendments and the final passage.(i)

5. THE DEPARTMENTS

Every function or part of the city administration shall be assigned to a special department, either as provided in the charter or by vote of the council upon proposal of the executive as above, and every head of department shall be held personally responsible for the whole conduct of his department and the mayor for the conduct of the whole. The responsibility of the mayor shall be enforced by vote of censure or of removal as herein provided, and the responsibility of a head of a department by vote of censure or address of removal to the mayor as above, but in neither case shall the vote of censure in itself call for resignation of office.(k)

LAW

The city solicitor shall have charge of all legal proceedings of the city as provided in the existing charter.¹ There shall also be an assistant solicitor, with such aids as

¹ In this sketch whenever existing conditions are referred to, they are those of the charter of the city of Boston in 1898.

may be found necessary, who shall have charge of, and through the department heads be responsible for, the form and text of all measures and ordinances submitted to the council by the executive as herein provided; that they are in accordance with existing law, clearly and intelligibly expressed and not open to doubt in interpretation.

The law department shall also include the city clerk's functions, so far as relates to the care and custody of city records, documents, maps, plans, and papers; also recording chattel mortgages, assignments of wages, liens upon vessels, etc.

FINANCE

The commissioner of finance shall have the sole charge of and be responsible for every financial interest of the city, including both revenue and expenditure, the assessment and collection of taxes, water and land damages, betterments of property; also the income and outgo of public property and the sinking funds department. There shall be under him a chief assessor and as many assistant assessors as may be found necessary, a collector of taxes to receive the revenue, and a city treasurer to take charge of and disburse the money in accordance with the appropriations, together with such other officers as the council upon the proposal of the executive may authorize.

Three months before the close of the fiscal year the commissioner of finance shall place before the council a budget in full detail of the revenue and expenditure of the next year, based upon the final results of the accounts of the previous year, which shall then or previously be closed and their balances be carried to the credit or debit of those of the current year. The budget shall also include the accounts, as far as they have gone for the current year. The preparation of this budget shall be made in previous consultations with the mayor and all heads of

departments, each head of a spending department having made detailed estimates of its wants during the coming year, and the revenue department a like detailed estimate of income to be expected, with the sources and amounts of every item; the adjustment of all claims being under the supervision and decision of the mayor.

The budget thus prepared shall be fully explained on both sides of the account before the council, with a statement of any changes proposed in revenue or expenditure as compared with the previous year; and shall then be open for discussion. The council may by resolution call for increase or reduction of any item, but the final decision shall rest with the executive. The latter shall state his reason for acceptance or rejection of proposed amendments, and the council may enter its protest with the votes of members recorded, for the guidance of the voters at the election. The discussion and the budget shall be closed at least thirty days before the end of the year.

With the entrance of another administration and council in the new year, the budget already established shall be open to modification on the same conditions as above. If any expenditure shall call for an increase of debt, said increase shall be subject to approval by a central authority, established by the State government, with a view to which said authority shall be furnished with facts and figures as desired, relating to the finances of the city asking for such approval.

EDUCATION

The entire charge of the schools, properly so called, shall be under the commissioner of education. The erection and repairs of buildings provided for the accommodation of the schools by the council, upon the demand of the commissioner with approval of the mayor, shall belong to the public buildings department, but the administration

of the schools, including the appointment of a superintendent, inspectors, and other subordinates, and of school-teachers, the methods and courses of study, the discipline, the grading of schools, the care and supplies of buildings, shall rest with the commissioner, subject only to his responsibility to the mayor and the council.

At the annual elections there shall be chosen, by majority vote in each ward, one member of a school committee, who shall be reëligible indefinitely. The school committee shall meet on the first Wednesday in January in each year and organize by choice of a chairman, who shall preside at their meetings. The school committee may appoint sub-committees of one or more persons to visit the several schools. These sub-committees may inspect the methods of teaching, the discipline, etc., but without power of interference with the teacher. Upon their report the committee may address to the commissioner — who shall always be present at their meetings unless expressly excused — remonstrances and requests for change. If he declines to make these he shall state his reasons for such refusal; and the committee may then, either by resolution or through a sub-committee, address a request to the mayor to enforce the changes desired by them, even to the extent of a removal of the commissioner. If the mayor refuses to enforce their request, he shall furnish them with a statement of his reasons and the committee may then appeal in the same way to the council, who, if they see fit, may pass a vote of censure on the commissioner after due hearing and an address to the mayor for his removal. If no action is taken, the question shall remain open between the mayor and the council for the voters at the next election, subject to removal of the mayor as provided above. The general conduct and system of the schools shall be subject to regulation by a central educational authority established by the State government. The

commissioner of education shall also have charge of the public library on the literary as distinct from the administrative side.

POLICE

The police commissioner shall be responsible for the order and quiet of the city, for the just as well as firm treatment of the citizens, and for the enforcement of city ordinances and regulations. He shall also have charge of the fire department and of the department of weights and measures.

PUBLIC INSTITUTIONS

The commissioner shall have charge, besides those now included, of the hospital department.

PUBLIC BUILDINGS

Beside the present attributes of the department it shall include the construction and repair of all the city buildings, whether for schools, police, or other, and the market department and the public library as regards the buildings themselves.

HEALTH

The commissioner, in addition to the present duties of this department, shall have charge of cemeteries, of building inspection and permits for building, and of the abatement of nuisances.

HIGHWAYS

The functions now given to this department shall include the engineer's department, the lamp department, the park department, the public grounds department, all of the street department as now constituted and also the laying out of streets now done by the board of street commissioners, the water department, the wire department, and the street railways.

CHARITIES

The head of this department shall have under his control an overseer of the poor, superintendents of almshouses and all charitable institutions, and the granting of licenses for the sale of liquor.

ELECTIONS

This department shall appoint and be responsible for the registrar of voters, the warden, deputy wardens, and inspectors, and all matters relating to the conduct of elections. Its head shall further have the deciding voice, subject to the approval of the mayor, in all cases of disputed elections.

OFFICERS OF THE COUNCIL

There shall be elected by the city council the clerks and officials necessary for its own business, and also a city auditor, with the necessary organization for auditing all the accounts of the executive department and making reports upon the same to the council. The auditor shall be chosen within one month, and shall remain in office for one month after the expiration of the fiscal year, to give time for the closing up of the accounts of that year. An estimate of the expense of the auditing department and the other expenses of the council, required for the ensuing year, shall be presented on its behalf to the executive branch in time to be included in the annual budget, and if found reasonable shall be so included: *provided*, that the executive may object to any items or to the total, and after stating its objections before the council shall have the final decision in determining the amount of either.

It is easy to imagine the contempt and indignation which the serious proposal of any such plan of a city charter would excite. No doubt it is in contravention of all the practices and traditions of our actual city governments; but inasmuch as it is one point of almost unanimous agree-

ment that those governments are thoroughly unsatisfactory; since it is the contention of this work that their failure results from these practices and that the only possible mode of escape from such results is in the reversal of these practices, it seems worth while to weigh the arguments in favor of the change.

a. To get the voters interested and to arrive at their best judgment their attention should be directed to individuals, and to individuals whom they can follow at every step of their career. The mayor and the local member of council represent to the voter, under the proposed system, the two branches of the government and embody them in all their stages. Instead of being merely symbols of government they are the government, and as the government is good or bad they are for the voter good or bad and he acts accordingly.

The importance of insisting upon a majority vote has already been discussed.¹ It may be repeated, however, that it would add immensely to the interest of the elections, and that one or two experiments of a second election would teach our practical people the folly of throwing their votes away.

b. That is no doubt a tremendous power to give to the mayor, but it is the only way of getting the personal responsibility which is the admitted and most crying necessity of the time. The safeguard of confirmation of the mayor's nominations has been proved to be in practice, as it is in theory, a total failure. The real safety is to be found in public watching and criticism of officials after they have taken office and not in trading for confirmation beforehand. A mayor who knew that every appointee would have to stand the test of public cross-examination, and that his own standing with the voters must depend upon the result, would be unavoidably compelled to select

¹ See Chap. XXIII.

the best men he could find, and those at least of a purity of intention beyond reproach.

And as a further security against abuse of power, the council by a sufficient vote could depose the mayor. This would not give the slightest advantage to themselves, either as a body or individually, except for the reputation of vigilant guardians of the public interest, because it would only mean an appeal to the voters in a new election. The council would be pretty sure not to take such action without very good cause, at the risk of a popular indorsement of the mayor, while, on the other hand, they would hold an absolute safeguard against any violation of trust. It would have the advantage over the cumbrous process of impeachment, that it is prompt in operation, and, instead of trial by a small tribunal of uncertain constitution, would involve direct reference to the court of last resort, — the mass of public opinion. And without this violent process of deposition, the annual elections would of themselves furnish a test of the mayor's correctness in his appointments.

Of course, this, like all the rest of the plan, assumes the soundness and trustworthiness of that public opinion, but that is all we have to rely upon, and until we do make trial of it we cannot say that it has failed. In the language of the London *Spectator* already quoted, —

On the honesty and intelligence of the average man we must ultimately rely for our security. But the modern problem is how to provide, amid our vast aggregations of people, for the necessary control of men by their master the public; how to carry on business, so to speak, in the open, with criticism alike free and well informed and with adequate supervision.¹

c. The object of this is to prevent the chronic evil of gerrymandering, and the uncertainty, and extinction of local pride and interest, from the constant shifting of ward

¹ *Loc. cit.* Chap. XXIII.

lines. A permanent geographical division would soon accumulate a special history, character, and traditions, and furnish a stimulus to emulation in its relation to the general government of the city, just as some regiments in the British army carry on their flags the record of victories a hundred years ago. Reference has been made to this peculiarity in the sections of Paris.¹

By dividing each ward into precincts the single member system would be secured, which has been so strongly advocated.² The evils which are supposed to arise from that system, and which we have attributed to a wholly different cause, would be obviated by taking the business out of the committee room and bringing it into the arena of public debate. The member, instead of a mere unit in a party group, would become an individual in the eyes of his constituents, judged by his bearing towards the rest of the council and the executive branch.

What is now complained of is the narrow intrigue of political caucuses to secure party nomination. A member standing upon his own personality would practically nominate himself by securing a personal hold upon his constituents, or be compelled to give way to some one who could show fitter qualities. The element of personal interest would be greatly eliminated by placing the four members of the ward upon a general ticket, as it would be very much more so by a general list of the whole city. Again, if the precincts began to take a pride in the personal quality of their member, they would look for the most competent man whom they could find, and competition would grow up in seeking him over the whole city.

d. The intention here is to provide an impartial presiding officer, like the moderator of the town meeting or the Speaker of the English House of Commons, who is outside of and above party, whose pride and honor it shall

¹ See Chap. XXV.

² See Chap. XXVI.

be to enforce the rules with absolute impartiality, and stand not only as the protector of the rights of the minority, but as a firm and strong umpire between the executive and the council in public session. As has been pointed out,¹ it is impossible that any man should maintain such an attitude, who holds the power of appointment to positions in any degree of request, even so little as committees of inquiry.

In the framing and modification of rules, which are to be the standard between the executive and the council, the quality of impartiality in a presiding officer, who must of necessity be elected by the council, is of infinite importance.

e. If the council ceased to take part in executive work and needed only to criticise and control the executive, monthly meetings would probably be amply sufficient. The town meeting assembles but once a year and yet meets all important requirements. Provision is made, however, for special meetings whenever desired.

f. The proposed system does away with standing committees upon legislation, but those of inquiry might still be necessary. Of course, they cannot be appointed by the executive which is to be the subject of their investigation, and to make them elective by the council would invite their creation for partisan purposes. The doctrine of personality would point to the election of one man to do the work of appointment, which the Speaker now does. It is not, however, a personality which appeals to the people, and as the committee would be always present and open to question in the council, the responsibility seems to be sufficiently concentrated. A nominating committee, selected in advance and for all subjects, would be more likely to be impartial in each case, and though it might be too long to elect the members for a whole session, if

¹ See Chap. XVII.

satisfactory they would probably be reëlected from month to month.

Committees of inquiry appointed by and on demand of the executive might also be authorized by the council to investigate the expediency of legislation desired either by the council or the executive.

g. So far the relation between the branches is that indicated in the Senate report. It is the next provision which gives to this its practical effect.

h. This provision involves the whole initiative of legislation and is the one which would be most fiercely contested. In form, however, it is not so very different from the existing practice. At present, every measure proposed by any member, and as we have seen¹ they may amount to many hundreds, is referred to a standing committee. On the plan proposed, any member may introduce, not a measure but a resolution demanding a measure, and all such resolutions must be referred to one committee, consisting of the mayor and his staff of department heads. The difference between these committees is this. The standing committees, in great number, are made up of members of the council by no means necessarily skilled in making laws, since even the lawyers are only trained to interpret them. The members are average citizens, chosen only for their wards and neither representing nor responsible for the administration of the government. The mayor and his staff are trained men, or under the proposed system they could not be there. They represent the whole city, appeal to and excite equal interest in all, and are under the heaviest penalties, in the public criticism of the council, to take care that the laws or ordinances are coherent, practicable, and consistent with existing requirements and necessity of administration.

No doubt this would check the freedom of proposing

¹ See Chap. XVII.

legislation by individual members, which has somehow come to be identified with the sacred right of petition; but we again insist that an agency for preventing is quite as important as one for promoting legislation, and that a sense of security in the community that existing social and economic conditions will not be pulled to pieces without adequate consideration and cause shown, would more than offset any advantage of unlimited liberty of combination to overthrow them.

Note, further, that any member of council can still introduce any resolution he pleases, whether for himself or his constituents, but not in form of a bill. He can argue upon and advocate it during just as much time as the council chooses to allow him. He can personally solicit the support of other members of the council. He can agitate to any extent among the voters. He can by majority vote of the council demand of the executive to bring in a bill for the purpose of attaining the desired end. What he cannot do is, by skill in lobbying and log-rolling, to force a measure through the council and past the mayor's signature by a process invisible to the public, with no guarantee against corruption or party jobbery or that such a measure will not tend to upset the whole existing social organization.

Suppose a resolution to have been passed by the council, and that the executive disapproves of the measure. The proper head of department and the mayor, supported perhaps by a minority of the council, will state the reasons and argue the matter. If the council insists, the executive will incur a grave responsibility by refusing, while yet, if it believes the public interest involved, it may do so and trust to the support of the people at the election. If it yields, the bill prepared will undergo a thorough sifting and discussion, and if it is passed may be reasonably expected to answer its purpose and to be generally satis-

factory. If the executive does not yield and will not meet the wishes of the council, then recourse must be had again to the popular will. And here is the reason for giving the final decision to the executive.

Under the English parliamentary system, where the legislature practically makes the executive, the will of the former must prevail, though even there a dissolution gives to the ministry a power of appeal in extreme cases. But where, as in the United States, the executive and the legislative branches are evolved separately by popular election, then a power of appeal should rest with that branch which has the concentrated force of personality, which looks to the people as a whole and not by fractions, and which is intrusted by the majority of the whole people with carrying on the government as a whole.

This is the referendum in its true and practical sense. If it is understood as asking a popular decision as to particular measures, only those will give an answer, with any meaning, who are interested in those measures. All others will either abstain entirely or vote at haphazard or from irrelevant motives. And this will be the more true as the measures depart from the simplest and crudest principles. As a method of settling complex questions of government it is simply ridiculous. But that the people should be asked to pronounce upon the conduct of government as a whole by a single responsible head, made plainly visible to them by constant public discussion and criticism by a council specially selected for that purpose, is not only logical in itself but precisely in accordance with the most thoroughly tested principles of human nature.

We may again refer to the case of a railroad corporation. Suppose the directors were to agree upon a time schedule, one of freight and passenger rates, one of amount and kind of equipment, and one of salaries of employees, and submit them for approval to the stockholders, would not

the absurdity be apparent to every one? Suppose, on the other hand, that the stockholders chose annually a general manager; that the directors left all these details to him, subject to constant cross-examination and criticism in such a way that the stockholders could judge as to the quality not only of himself but all his critics, his subordinates, and his competitors. Would not that furnish the most effective and practical method of arriving at the best management of the road?

Note, again, that if it is reserved to the executive to decide absolutely that it will accept certain measures or none at all, on the other hand it can do nothing of any kind without the assent of the council, which has an absolute veto upon every proposal. The council may, in fact, go so far as to refuse, by a mere majority, the current supplies for carrying on the government, in which case the mayor would have no alternative but to resign. But that would not, according to the procedure which is disadvantageous in England and so fatal in France and Italy, give to the legislative body the power to replace him by a new executive. That can only be done by the people in a new election. But that is an ordeal to which neither mayor nor council would resort unless in extremity. Each would be playing for position during the whole year, only instead of private intrigue and bargain it would be a contest through openness of motive and strength of character to reach that silent mass of public opinion, which we have assumed as the basis of argument to be essentially sound and desirous of good government.

It may be said that men would not accept places in a council where they had no initiative and only an ineffective veto; and it certainly would call for men of a different kind. At present the facilities for jobbery and log-rolling and the absence of personal responsibility are so ingeniously combined with an impossibility of obtaining

any personal credit for good work done, that good men are repelled from and bad men are attracted to positions where reputation cannot be won and is certain to be lost, the latter drawback being compensated by the prospect of illicit gain. If, on the other hand, a seat in the council carried a guarantee against suspicion of wrong-doing in the simple fact that the first step in wrong-doing, which could only be through collusion with the executive, would almost certainly involve prompt and public exposure; if it carried the opportunity of winning personal reputation by a vigilant watchfulness of public affairs and an honest and fair criticism of administration, by suggesting plans of improvement and greater efficiency, and of thereby marking out the individual as a candidate for executive office,—such seats would be eagerly sought for by the multitude of men of independent leisure, who are pining for just such fields of activity. They would assemble a company of men, the mere association with whom would form a coveted prize; and they would elevate the tone of public morals and inspire that confidence in and respect for government which are among the first elements in establishing a contented, orderly, and law-abiding society.

i. By this means would be avoided the hasty passage of measures by a single reading, making the others a mere matter of form. The practice of the British House of Commons is also worth considering, that between the second and third readings a bill should go into committee of the whole, when, under a different presiding officer, details and amendments are more fully discussed. This would, however, be less necessary if, as proposed, all amendments were subject to the final approval of the executive.

k. There is here proposed a division into ten departments, each with a separate head and forming collectively a cabinet for the mayor, the administration being thus collected into one coherent and harmonious whole. While

each would be answerable for his department they would form a sort of advisory council, offering opinions to the mayor, when requested, upon any point, notwithstanding that in the end he must be alone responsible. Mayor Quincy (1895-99) established, of his own motion, outside of the city government and the charter, an advisory committee, composed of seven delegates, chosen by leading commercial bodies.

In accepting the nomination for mayor, I stated my purpose to invite the important business organizations of the city to choose a joint representative committee, whose advice and counsel should be available to the mayor, and through him to the city council, the legislature, and the public, on business questions generally, and especially those relating to commerce, transportation, manufactures, and taxation.

In pursuance of the plan thus suggested, and with the object of establishing a strong and permanent connecting link between the city government and the leading business organizations of the city, I have already addressed communications to the Associated Board of Trade, the Boston Chamber of Commerce, the Boston Clearing House Association, the Boston Merchants Association, the New England Shoe and Leather Association, and the Real Estate Exchange, inviting these bodies to appoint delegates to a committee of seven members, which I propose to designate as the Merchants' Municipal Committee.

They were not, however, in any sense representative of the people of the city, but only of special interests; they had nothing whatever to do with administration and never appeared to the public view by discussion in the council. Their whole function consisted in relieving the mayor of a nominal responsibility in arriving at decisions and in carrying them out. It is also provided in the charter that the mayor shall call the heads of departments together monthly for advice and consultation. But that is of little use, so long as they are in practice merely agents for carrying out the orders of the council, and neither they nor the mayor ever encounter that body in public for the enforcement of mutual responsibility.

It may be and often is said, that a person fitted to carry on the work of a department may not be at all fitted to explain or defend that work before the council or the public; and that it would be impossible for anybody to fill both functions. This very obvious objection would be overcome by a division of labor. It is a necessity and it is often made a matter of contempt of popular government, that it is carried on mainly by talk. The "spoken word" is the instrument for moving masses of men. The head of a department, therefore,—and this is equally true of a city, a State, and the nation,—must have the ability to make a lucid and coherent statement of its wants and operations; he must be quick to perceive and ready to meet the force of objections; he must be patient and conciliatory in debate and yet sharp enough to repel unwarranted attacks: and do all this with a view not merely to the council which he is addressing, but to the great mass outside, silent, except for their votes, and with whom the most potent force is personal bearing—manliness and candor and sincerity. Such a department head might be selected by the mayor for his technical knowledge, but that would not be the first requisite. All that part he would get from his subordinates. Like a barrister, who conducts a case in court, he would get from them all the facts and principles and arguments, and arrange them to bear the test of examination.

Such an organization, again, would be, as has been pointed out, the most powerful instrument of civil service reform. However much the mayor and heads of departments might look to politics for success, their final test would be by their work in office; for which they would be compelled to rely upon the quality of their subordinates. No pressure of political partisans would be powerful enough to offset the public exposure of having appointed incompetents to office for political or personal reasons.

The same consideration would overcome one of the principal objections to civil service reform,—the continuance in office of worn-out or superannuated incumbents; or again, combinations of officials, secure of their tenure, to compass the minimum of service with the maximum of pay. All such details would have to run the gauntlet of a council, cut off from all interest in them, except successful criticism of administration.

We will next pass in review the several departments.

1. *Law*.—It is hardly necessary to point out in this, as in all others, the advantage of having always at hand full, public, and accurate information, in separate detail and in their relation to each other, of all legal conditions of city affairs; elicited by cross-examination of the one person who is bound to know all about and to control them. If it is objected that there are some things which it is not desirable to make public, it may be replied that it is perfectly easy for the department head to state the fact and ask for delay, promising that at a proper time the whole case shall be laid before the council, a promise which would be pretty sure to be kept in view. Further persistence on the part of the council might be met by a direct refusal, always under the same general responsibility to public opinion.

There is hardly any weaker point in our legislation than the carelessness of drafting and preparation, resulting in incoherence, frequent contradiction and unfitness to attain the very ends desired. An adequate staff attached to the law department, whose duty it should be to take every rough sketch of a measure proposed, and, with the coöperation of the department principally concerned, to put it into a shape consistent in itself and with the whole body of municipal law; and which, through the heads of two departments and the mayor combining, should offer to the council and the public a personal responsibility for the

satisfactory performance of the work, — would form, perhaps, the nearest to a perfect human agency for obviating the evil which now causes such loud complaint.

2. *Finance.* — It has already been argued,¹ that the keystone of the arch in public affairs is a sound financial system; that without it disaster, always impending, cannot be permanently averted; and that our system in the nation, the State, and the city is unsound and dangerous to a degree which could hardly be surpassed. In no branch of government is there so much need of strong individual control and responsibility; in none is the total absence of these elements more apparent. The English national is beyond question the finest example of public finance in the world, and the reason is that while no other approaches it in the concentration of power in the hands of an individual, no other contains even the semblance of a corresponding personal responsibility. The proposed city charter accordingly aims not so much to secure concentration of power as of that visible and personal responsibility which is the indispensable basis of the whole fabric.

The starting-point is the simple principle, that income should not be adjusted to expenditure but expenditure to income. A full knowledge of all the sources of income, of the bearing of taxation on the welfare of the community, of the margin for increase or the need of relief, would be followed by that of expenditure taken as a whole, the relative importance of the different items, the question whether any item was or was not worth the burden of taxation, whether sufficient economy was practised in all departments, how far any expenditure could with advantage be spread over a series of years; what portion ought to be met out of current income, and what portion could be charged to the future by debt.

It will be noted that the final decision given to the

¹ See Chap. XX.

executive is only what has been exercised by the boards of Estimate and Apportionment in New York and Brooklyn, whose appropriations cannot in the final result be changed by the board of aldermen. But, in the first place, the former boards are made up of a number of officials separately elected and independent, their deliberations are almost entirely in private and their decisions wholly impersonal, never carrying any element of public and individual responsibility. There is never any of that personal encounter in debate which is the prime requisite for arousing the interest and guiding the judgment of the voters. There is none of that combination of discussion as to the financial and other departments, which the proposed plan contemplates. There is none of the steady and constant criticism throughout the year of the conformity of the conduct of administration to the original provisions of the budget. Finally, the boards of Estimate and Apportionment deal only with expenditure. The revenue is in a greater or less percentage of taxation, upon a system provided by the State government, and lowered or raised to conform to the total of expenditure. No doubt the system of taxation must be established by the State, but the effects ought to be considered in regulating the expenditure, while constant discussion of the system would be of infinite value in guiding the action of the State.

Such personal debates upon financial questions in the council would bring out in the strongest light the abilities not only of the executive officials, but of individual members of the council, and so develop and impose that strength of personal leadership which it is now the main object of all our political arrangements to suppress, with the result of throwing all our large cities under the rule either of bosses or corrupt factions. There is hardly any instrument more effective for this purpose, by suppressing all knowledge of or interest in the city finances on the

part of the voter, than a Board of Estimate and Apportionment.

As regards debt, the present method of checking unlimited expenditure is to have the State fix a limit of percentage of debt to valuation. The method of evading this is to lobby through the legislature a bill of exemption in special cases. Indeed, the legislature of Massachusetts has taken to creating commissions for executing expensive works and assessing the amount upon town and city, regardless not only of their debt limit, but of any expression of their wishes. Supposing a system of executive responsibility, like that proposed for the city, to be established in the State, a general law with relation to municipal debt, placed in the hands of a responsible authority and subject to constant discussion and amendment, would at least furnish some means of check upon what threatens at no distant day to become a subject of serious embarrassment.

3. *Education.* — The chaos and confusion of our school systems must appear, to one who studies them impartially for the first time, to be something almost incredible. Yet they are only the logical result of an administrative organization, which has at its head a more or less numerous body of persons — in Boston twenty-four — elected on general ticket, by popular vote, for overlapping time, without even a nominal head, except a presiding officer elected by themselves, and doing business by committees, of which there are in Boston nineteen. The overwhelming difficulties of such a system have led of late years to the establishment of a general superintendent of the schools. But the vice of the multiple head remains and the function of the superintendent and the qualities required in him are much less those of managing the schools than of managing the committee. That so practical a people should put up with methods so clumsy and inefficient may be ascribed to several causes: the force of crystallized tradition; the

morbid jealousy of one man power, or of any individual superiority, and the consequent absence of leadership with the voters; the desire of the average elective office-holder for the maximum of power with the minimum of responsibility; and the dread and distrust towards the voters which seek to limit their functions to the election of certain units, practically unknown to them and which immediately disappear from their sight and control.

In no department would the proposed charter involve a greater revolution, but one of which the beneficence can easily be shown. The separation of the construction of buildings from education would greatly simplify the latter, while the close connection and interdependence of the departments would secure the adaptation of buildings to their technical requirements. The educational system, radiating from a single head, would form a coherent and harmonious whole. That it was devoted to the best interests of education and to nothing else would be insured by the direct and personal responsibility of the commissioner to the mayor and through him to public opinion, in both cases enforced by the criticism first of the school committee and then of the council.

The great importance of the public schools justifies the existence of a committee separate from the council, but the unity and the force of government demand that they shall not interfere with the executive branch. They must not interfere with the discipline or the regular conduct of the schools, but they can study and inspect them and urge upon the superintendent any modifications which after discussion they may think advisable. Nor will he be prepared, in view of his responsibility to his superiors and the public, to reject them without due consideration, but the final decision, saving the right of appeal, must be left to him. It is the only way in which a stable, well-ordered, and progressive system, with the best executive ability,

can be attained. Nor does it follow that the places on the committee would be any less attractive to the best class of citizens. Men or women of that kind would prefer to have their power limited to open criticism and discussion of the schools, the superintendent, and the mayor, rather than to find themselves committed to courses which they either do not understand or do not approve of, by the votes of an irresponsible and unreliable majority from which there is no appeal.

Indeed, there is no department to which such a board might not be attached for securing the services of eminent citizens, and either elective or appointed as the executive and the council might agree, provided their power was limited to criticism and advice without executive interference and that the direct personal and public responsibility of the mayor and heads of departments to the council was fully maintained.

The establishment of some central educational authority in the State government need not conflict at all in principle with the local systems. On the contrary, if a similar organization of executive responsibility existed there, it would be of inestimable value in collecting and comparing the results of local experience and embodying them in general laws.

4. *Police.* — As far as any knowledge or control on the part of the citizens is concerned, the police of Boston differs very little from those of the first and third Napoleons in France. It is nearly as secret and nearly as irresponsible. It may preserve good order in the city, — though even so far it is impossible to get any reliable information, — but for the other, and hardly less important, purpose of interesting, informing, and increasing the available force of public opinion it is absolutely useless. Its relative expense is also completely out of sight, the police commissioners, appointed by the State, making their demand for a lump

sum. There is good reason for belief that the pay and advantages of the police force are much greater than those of any other form even of skilled labor, and much greater than the service could be obtained for under open competition. A single commissioner, appointed by the mayor, given the full initiative and held to accountability in open council, would not only clear up all these points, but would be an object of vivid interest to the whole city and an important element in the annual elections.

There seems to be no reason why the fire department should not be under the charge of the police commissioner. At present its condition in Boston illustrates the total want of system in the city government. Whereas the police force is in the hands of three men, appointed by the governor and confirmed by the council of the State, and wholly independent of the people or authorities of the city, the head of the fire department is a single man, appointed by the mayor without confirmation and held to no co-operation with the police. So far the fire department is very much nearer the ideal.

But the defect common to both is the want of public responsibility, of accountability to public opinion, and of the projection of personality, either in the mayor or the commissioner, which attracts the attention of voters, and marks out men for advancement in the public service upon their own merits, and not through the trading of caucus politicians. Under a man of first-class character and ability, the fire department is now apparently in a state of high efficiency, but the expense is another question. As with the police, there is evidence that it is a highly favored service, with advantages much beyond those of any outside skilled labor, or what the same service could be obtained for under a responsible system. The secrecy, again, has the same effect as with the commission, — that if corruption does creep in, it can make ravages which

would be impossible with public and personal responsibility before a council.

5. *Public Institutions.*— If the police and the fire departments illustrate the want of coherence in the city government, the public institutions point to its instability. From 1857 to 1895 these institutions were in charge of a board, appointed by the mayor and confirmed by the aldermen, the number beginning with twelve and being gradually reduced to three. In 1895 the board was displaced by one commissioner appointed by the mayor without confirmation. On the principles of this book it was a decided step in advance, though still neutralized by want of enforced responsibility. In 1897 an Act of the legislature limited the power of the commissioner to penal institutions and the insane hospitals, and established separate boards for the care of children and of paupers, though the attempt to set up another one for the insane was defeated. These boards were to consist of seven trustees each, appointed by the mayor, one (or two) each year for five years, but fortunately without confirmation by the aldermen. This arrangement, which we, of course, regard as distinctly retrograde, will probably continue until somebody thinks it worth while to go through the work in the legislature necessary to upset it.

The point now made is not as to the value of the arrangement, but as to the methods by which it was carried. It appeared as "the petition of George S. Hale and others," not actual and responsible officials, nor representing the city government, but simply so many citizens. Of what passed in the committee there is no record. Of its correctness there is no guarantee except in the character of the petitioners, which was undoubtedly high. What the procedure was in the houses we have already indicated in another case.¹ The bill reported by the

¹ See Chap. XXIII.

committee was taken up at least a dozen times in the House and half as many in the Senate. Not one single man spoke upon it representing the State, or the government of the State or that of the city of Boston. It was simply lobbied through, as all legislation must be, and almost any legislation with adequate resources may be.

If there had been a responsible official in the legislature, the bill would have been met with the objection that it would not be considered except upon application of the government of Boston, or at least without an authorized report upon it; that radical changes in the government of the city could not be made upon the request of a mere association of citizens, of whatever standing. If there had been a responsible official in the city council, the duty of those citizens would have been first to urge the change upon the city executive. If they failed either by direct attack or by popular agitation to attain their end, they could then apply to the executive official of the State, and after satisfying his criticism and requirements induce him to place it before the legislature. If this resource failed they could urge a resolution upon the legislature, challenging the executive to submit a bill for the desired end; and this again failing, they must resort to popular agitation for a change in the general municipal law. If the delay and difficulty of this process are objected to, the reply must be that it is better that change should be too difficult than too easy, and that when it was made it would be pretty certain to be in the right direction.

6. *Public Buildings.* — In the actual charter of Boston this department includes only the care of certain existing buildings. The construction of new ones is intrusted to the respective departments interested. What this means is well shown by the new public library. The original plan and estimate called for \$750,000. Yet the outlay, before it was completed, was over three millions, and within

a year \$100,000 was asked for for necessary additions. This did not at all imply dishonesty in the trustees. It was that a group of men, presumably selected with a view to books and their use, and in no way responsible for the city finances, were given a free hand in a very large and expensive building enterprise.¹ Any one who wanders among the palaces known as schoolhouses and police and fire stations, and judges by them of the whole city expenditure, will not wonder that the city finances occasion some uneasiness, particularly since the legislature has begun to take a hand in them.

A buildings commissioner, having charge of the whole subject, yet through the mayor in touch with and responding to the wants of the other departments, but under the strict supervision of the commissioner of finance, behind him of the council, and after that of the voters, might well be expected to produce a different result.

7. *Health.* — The modern idea of sanitary requirements has a very considerable social influence. Every physician is obliged to report to the board every case of contagious or infectious disease; and the proceedings of that body, however necessary for the public health, are sometimes startling as an invasion of private rights. Their agents enter houses and rooms with the most peremptory orders for expensive cleansing processes, the destruction of bedding, clothing, etc., sometimes forming a heavy tax upon persons who have already suffered severely from the illness. The subordinates constitute themselves the judges of what is necessary in each case, and from them there is practically no appeal. It is not the only instance of official assumption of authority, which is gradually accustoming

¹ A comparison may be made with the Congressional Library at Washington, built under the federal system of direct individual responsibility, within the original estimate of cost, and with many times greater value received for the money expended.

our people to the blind obedience exacted in certain cities of Europe.

The steady increase of power should be accompanied by a corresponding increase of responsibility. An official at the head of the whole system, open to constant criticism and question, and bound to keep in harmony with his other associates and the mayor, would furnish no more than a reasonable safeguard.

8. *Highways.*—The multitude and variety of topics coming under this head make it, perhaps, the most complicated and difficult of any department, yet for that very reason there is none in which a single and publicly responsible head is more needed. The laying out and construction of new streets should form a part of the same system with the repairs of the old. There seems to be no reason why the functions of the street commissioners, three officials separately elected by popular vote, should not come under the same system. All questions of pecuniary damage or compensation should accrue to the finance department, being settled by methods to be determined between the executive and the council.

The constant tearing up of the streets by the various underground interests calls strongly for regulation; while above all towers the vital question of street railways. At present there is absolutely no authority, having at once power and responsibility, with whom these great corporations can deal. Their negotiations consist of lobbying, either with the city council or the State legislature. They are never certain of their position and the public is never secure from their machinations. The first necessity on both sides is for a single executive head of the street department, without whose consent they can exercise no rights of any kind, by whom they can be held to their obligations, and to whom they must apply directly, or indirectly through the council, for any modification of existing conditions.

Such an official, working with his colleagues and the mayor and in presence of the council, could maintain some steady policy, determined by the nearest possible approach to the general public interest. If recourse to the legislature, either on the part of the company or the city, became necessary, it would find a similar official, bearing the same relation to a State cabinet, to the governor, and to the legislature, so that the subject would be taken up in the full light of the city experience, and dealt with on the same principles of public responsibility. An outcry is arising that the difficulty of street railway control must be met by municipal, replacing private, ownership. Only the evils of either condition will be developed as long as such chaos and confusion in both city and State governments continue to exist.

What is now known in Boston as the water department practically includes three departments. The construction of reservoirs, houses, etc., might well belong to the commissioner of public buildings; the conduits and piping in the streets to the street department, and the collection of water rents to the finance. The departments, being in harmony under the mayor, would admit of the work being well and economically done, and would in no wise interfere with a common system of accounts for everything relating to water. The pressure of the council and of the voters behind them would always tend to secure the best men and the best results.

If a comprehensive scheme of water supply was in hand, like that from the Nashua River affecting a number of towns and cities, instead of handing over the whole subject and a lump sum to three despotic commissioners, wholly irrespective of the wishes of the localities, the responsible State official would confer with the corresponding officials in the city, and frame a plan which could bear discussion in the legislature. If no agreement could be

arrived at—and it is no proof, because nothing can be accomplished under the present paralysis of the regular executive, that there could not be — then we are face to face with the question, whether we are prepared to give up popular government altogether and hand over our affairs to irresponsible and despotic power, which is none the less such that it is distributed among groups of three persons, appointed for periods of five years.

9. *Charities.* — It sounds almost like blasphemy, in the face of English tradition as well as our own, to intimate that the care of the poor can be trusted to any one but a board. Yet if we consider the desire and the duty of a democratic society to prevent suffering, and on the other hand the disastrous effects of indiscriminate and ill-regulated charity, — of which the English poor laws of the past and our own of to-day furnish abundant illustration, — it is evident that hardly any subject calls for a steadier policy, for the deliberate and systematic administration which can only be arrived at through the personal responsibility of a single head, acting in concert with selected associates, under the control of a common superior, and held up to public approval or censure by the unremitting watchfulness of an independent legislature.

Again, there is no more difficult or more important subject than that of granting licenses for the sale of liquor. In Boston that power is in the hands of the police commissioners, which, considering that they are wholly beyond the control of the authorities or people of the city, that the income from licenses is applied to meet their expenses, and that the larger it is, the smaller will be the margin for which they have to call upon the city treasurer, seems, to say the least, not a very logical arrangement.

As it is generally admitted that the heaviest source of demands upon public charity arises from the sale of liquor, that department seems best fitted to present the demand

for restriction of licenses. It would meet with a powerful competitor in the commissioner of finance, and as the mayor must be the arbiter between them, and the plan proposed must meet the fire of debate in the council and go far to involve the fate of the city government at the hands of the voter, it seems a method as elastic and responsive to public opinion as so intractable a subject will allow.

10. *Elections.*—It may seem that this subject is hardly important enough for a separate department, particularly with the restrictions herein proposed. It does not follow, however, that the departments need to be equal in importance or compensation, but as elections are the essential feature of popular government, they should be made as public and as free from suspicion as possible by means of a single responsible head. There is, moreover, one difficulty which has never been satisfactorily provided for; namely, that of disputed elections. The universal rule in the United States, as it was formerly in Great Britain, is, that an elective body shall decide doubtful cases as to its own members. Both theory and practice indicate that this will be done from pure considerations of party. No reform in England has done more honor to the House of Commons than the surrender of its own power in this respect, and the handing it over to the courts. Even that is not, however, wholly satisfactory. It makes the courts judges of fact and politics, when they should be confined to the exposition of law; and as even judges, being human, are not above party prejudice, every suspicion of it tends to diminish that respect for the impartiality of the courts which, like that of the Speaker of the House, is the strongest foundation of their usefulness.

The position of the British executive precludes any action on its part, because its existence is bound up with that of the majority of the House. But a separately elected head with a staff of assistants, whose first object

it must be, under the sternest criticism from the council, to place themselves in the right before the public, would seem to furnish the safest tribunal. A provision might be added that in the case of members of the council, as would indeed be necessary in the case of the executive, persistent disagreement should be settled by a new election.

The plan of a city charter has been thus elaborately discussed, because it involves all the principles laid down in this book. The microcosm of a city reproduces, under our institutions at least, almost exactly the machinery which moves the wider form of the State and the nation. If it be said that, whether the theory is correct or not, it is a mere Utopia, wholly beyond the possibility of reduction to practice, it may be replied that if it will remedy existing evils nothing should be regarded as impossible, any more than those mysteries of physical science which have yielded to human energy and will; and that there is needed in public life only a few of those commanding figures who can call to their aid the mighty force of public opinion to break away the nets which the intrigues of political combination have woven around the principles of popular liberty and control.

CHAPTER XXXIV

THE TURN OF THE ROAD

BEFORE summing up finally the conclusions at which we have arrived, it will be of advantage to examine the startling commentary furnished by the events of the year 1898 upon the principles thus far laid down.

In his last message to Congress in December, 1896, President Cleveland reviewed the Cuban situation.

It was at first proposed that belligerent rights should be accorded to the insurgents—a proposition no longer urged because untimely and in practical operation clearly perilous and injurious to our own interests. It has since been and is now sometimes contended that the independence of the insurgents should be recognized. But imperfect and restricted as the Spanish government of the island may be, no other exists there; unless the will of the military officer in temporary command of a particular district can be dignified as a species of government. It is now also suggested that the United States should buy the island—a suggestion possibly worthy of consideration if there was any evidence of a desire or willingness on the part of Spain to entertain such a proposal. It is urged, finally, that all other methods failing, the existing internecine strife in Cuba should be terminated by our intervention, even at the cost of a war between the United States and Spain—a war which its advocates confidently prophesy could be neither large in its proportions nor doubtful in its issue. . . .

It would seem that if Spain should offer to Cuba genuine autonomy—a measure of home rule which, while preserving the sovereignty of Spain, would satisfy all rational requirements of her Spanish subjects—there should be no just reason why the pacification of the island might not be effected on that basis. Such a result would appear to be in the true interest of all concerned. . . . It has been objected on the one side that Spain should not promise autonomy until her insurgent subjects laid down their arms; on the other side that promised autonomy, however liberal, is insufficient, because without assurance of the promise being fulfilled.

After arguing that neither of these objections need be final, he says:—

When the inability of Spain to deal successfully with the insurrection has become manifest, and it is demonstrated that her sovereignty is extinct in Cuba for all purposes of its rightful existence, and when a hopeless struggle for its reestablishment has degenerated into a strife which means nothing more than the useless sacrifice of human life and the utter destruction of the very subject-matter of the conflict, a situation will be presented in which our obligations to the sovereignty of Spain will be superseded by higher obligations which we can hardly hesitate to recognize and discharge.

When this was written the structure of the next Congress and the next incumbent of the presidency were already decided upon. In what follows our aim is to side with neither party. The indictment runs to Congress as a whole, and not even to Congress in its individual members, but to the attempt of a large body of equal units, or rather of two such bodies, to carry on the government. The Republican Convention assembled at St. Louis in June, 1896, and selected as its candidate Major William McKinley of Ohio, an army officer of good repute and twice governor of his State, but known chiefly to the country as chairman of a committee of Ways and Means in Congress which evolved the highest and perhaps the most arbitrary protective tariff in its history. Of course his portrait was spread broadcast over the country, and it was impossible not to read in the amiable and gentlemanly features a want of decision and firmness of will. Evidently this was not the man to stand up against a determined majority in Congress. His campaign was conducted almost entirely by Mr. M. A. Hanna, a rich merchant of Cleveland. The protected interests were as usual appealed to, and it was currently believed, rightly or wrongly, that more money was spent than ever before in a presidential campaign.

The platform adopted at St. Louis was unusually definite. The most exciting question before the country was whether

gold alone should be maintained as the basis of the monetary system, or silver admitted to free coinage and the legal tender quality at a ratio of 16 to 1. After some hesitation the party managers decided in favor of gold, and the Convention ratified the decision by 812½ to 110½, the silver minority being almost dissatisfied enough for revolt, and prepared to give abundant trouble in the future. A protective tariff was strongly adhered to, for reasons which we have seen were not wholly those assigned, though not much less obvious on that account.¹ Adherence to civil service reform was also proclaimed, and commanded about equal confidence in its sincerity.

A new departure was most apparent in foreign affairs.

The planks which deal with our foreign relations are by no means timid or of doubtful meaning. The Republican party now stands committed to the following propositions which for brevity we condense:—

1. The Hawaiian Islands should be controlled by the United States, and no foreign power should be permitted to interfere with them.

2. The Nicaragua Canal should be built, owned, and operated by the United States.

3. By the purchase of the Danish islands we should secure a much-needed naval station in the West Indies.

4. American citizens and American property in Armenia and elsewhere in Turkey must be absolutely protected and at any cost.

5. The United States has a right, in reassertion of the Monroe Doctrine, to respond to the appeal of any American State for friendly intervention in case of European encroachment.

6. We hopefully look forward to the eventual withdrawal of the European powers from this hemisphere.

7. [Touching the annexation of Canada.] The ultimate union of all the English-speaking part of the continent by the full consent of its inhabitants is hopefully anticipated.

8. The government of Spain has lost control of Cuba, is unable to protect the property or lives of resident American citizens, and cannot comply with its treaty obligations; and therefore the United States should actively use its influence and good offices to restore peace and give independence to the island.

¹ See Chap. XX.

Don Quixote, starting out on horseback to abolish misery in the world, had hardly a more comprehensive programme.

Nothing is said anywhere in the platform about international arbitration. As to the navy, the following sentence suffices to show where the party stands: "We therefore favor the continued enlargement of the navy, and a complete system of harbor and seacoast defences."¹

What was the attitude of the Democratic party? It will hardly be denied that Mr. Cleveland at the end of his term had lost touch and control of its political element. Many of his actions — that towards the Hawaiian revolution, his bond sales, his restoration of order in Chicago — had called forth approbation from at least a considerable proportion of independent thinkers; but his hardly concealed indifference to and contempt for Congress excited its hostility. His extension of the civil service rules² probably appealed most to the public sympathy but least to that of his party. It was said that at the Chicago Convention more bitterness was shown towards the existing administration than towards the Republicans. If Mr. Cleveland had appealed from Congress directly to the people he might have laid the foundation of a movement in the future. But no President since Abraham Lincoln seems to have had any idea of the immense force to be drawn from the calm but profound reservoir of the mass of public opinion.

When the Chicago Convention met in July there were absolutely no leaders. The short period of Democratic rule after thirty years of exclusion had ended in failure, and, except the President, had not evolved even the semblance of a statesman. There was a strong contrast between this and the assembly at St. Louis. The latter was in the hands of a combination of political intriguers

¹ *Review of Reviews*, July, 1896.

² See Chap. XIX.

probably as powerful as ever existed. The Chicago Convention was in no hands at all. It was a flock of sheep without a shepherd and the only question was which ram should jump over what fence. Never was there a stronger illustration of the necessity of personality for controlling masses of men. Here was an assembly of fifteen thousand souls, not bad people, probably ready to respond to any sentiment of virtue or generosity or self-sacrifice, but charged to the brim with hero-worship, and hungering and thirsting for a man.

And no man was given to them. The pitiless roll of the Juggernaut car in the shape of impersonal government for generations by committees, commissions, and legislatures, had crushed out all individuality and left nothing even on the victorious side but skilled wire-pullers. A mass so charged with electricity must, however, strike somewhere, and the lightning-rod was furnished by a single speech, of which the glittering point in one sentence went the rounds of the papers: "You shall not crucify mankind upon a cross of gold." The heated blast of enthusiasm rushed forth to convert the congressional lawyer of yesterday into the demigod of a party.

William J. Bryan of Nebraska is a lawyer by profession, at that time thirty-six years of age and said to be the youngest man ever nominated for President. As a statesman he was an unknown quantity, having come before the country only as an average member of Congress.

Mr. Bryan has a voice of great power and singular charm, which he has learned to use with a very high degree of elocutionary art. His great effort at Chicago was full of carefully phrased periods and of carefully studied arguments which had done service more than once in the speeches which he had been delivering elsewhere. . . . His task was to produce the largest possible oratorical effect, and he evidently knew how best to use his oratorical stock in trade.¹

¹ *Op. cit.*, August, 1896.

No speech which he has since made can be said to contain any statesmanlike or constructive idea, and a formal address which he delivered in New York before a large audience was practically a death-blow to his campaign.

The platform adopted was not very revolutionary in character. It favored an income tax and criticised in rather mild terms the decision of the Supreme Court against it. It advocated local self-government and the rights of the States, protesting against arbitrary interference by the federal authorities in local affairs and against government by injunction by federal judges; protested against a protective tariff; favored restriction of immigration; opposed trusts and monopolies and lavish appropriations by Congress. Its attitude in foreign affairs was expressed in a single clause.

We extend our sympathy to the people of Cuba in their heroic struggle for independence.

The head and front of the offence was in the following:—

We demand the free and unlimited coinage of both gold and silver at the present legal ratio of 16 to 1, without waiting for the aid or consent of any other nation; that the standard silver dollar shall be a full legal tender equally with gold for all debts, public and private, and we favor such legislation as will prevent for the future the demonetization of legal tender money by private contract [that is, stipulating for payment in gold].

The platform also called for the substitution of greenbacks for national bank notes.

The words 'gold' and 'silver' in this connection have far more than their apparent meaning. They form the banners under which the opposing hosts are advancing to conflict. Gold in the popular mind is the symbol of capital and wealth, of trusts and monopolies, of the influences which are supposed to corrupt and control Congress and the government. Silver typifies the toiling millions who are working themselves up, or are being worked up, to

believe that their hope rests upon combining to resist oppression. Probably nine-tenths of those who are acquainted with the subject, whether from study or practice, believe that the poor would be the worst sufferers from our abandoning the common money standard of the world. But for the multitude it is a matter of sentiment without any real knowledge at all.

Nor can the line be sharply drawn. That a government by declaring paper money a legal tender should make it equal to gold coin is a falsehood so palpable as to seem to many minds even more glaring than it really is. But in this country for a hundred years, not to speak of earlier history, gold and silver have circulated on equal terms. In 1873, when silver was demonetized in this country, it was if anything slightly more valuable than gold. It has never been demonstrated, in fact it is incapable of demonstration, that the relative fall of silver was not caused by the cessation of its use as money in other countries; and a great many intelligent men, among whom was conspicuous the late Francis A. Walker of Boston, believe that this disuse has caused much suffering in the past and threatens vastly more in the future. It was, therefore, a fine subject for declamation, which was certainly not discouraged by the owners of silver mines with one hundred per cent profit in view.

It was felt throughout the country, and mainly upon this ground, combined with the generally unsatisfactory aspect of the finances, that the conflict was taking the form of one between capital and labor, and general anxiety and depression of business were everywhere apparent. Failing confidence in the government and the visibly growing strife between classes were filling the minds of men with dread, none the less potent because undefined. The popular vote, 6,500,000 for Bryan against 7,100,000 for McKinley, showed how close the contest was and how

much depended upon the course of events before 1900. The state of the finances seemed to render necessary an extra session of the new Congress immediately succeeding the old one on the 4th of March, 1897, an event of itself sufficient to cause alarm throughout the country. The inaugural address of President McKinley related almost entirely to the finances. A settlement of the currency question is imperative. The severest economy must be practised and extravagance in public expenditures stopped wherever it is found. The government should not be permitted to run behind or to increase its debt in times like the present.

The conditions of business demand the consideration of Congress. . . . The depression of the last four years has fallen with especial severity upon the great body of toilers of the country. . . . The depressed condition of industry on the farm and in the mine and factory has lessened the ability of the people to meet demands upon them. . . . Business conditions are not promising.

It is worthy of notice that the address did not contain one word as to Cuba.

Congress sat in session for nearly five months, and it is literally true to say that on the points of the President's address it accomplished nothing. In the first place, the advocates of the gold standard differed among themselves so widely that it became at once evident that they could reach no result. Between those who advocated a currency of legal tender greenbacks redeemable in gold, and those who demanded a voluntary circulation of State bank notes based upon their assets, there were numerous groups, none of which would yield a step to the others, while over against them were the silver men, urging a theory, fallacious and dangerous indeed, but as to which they were agreed and had the advantage of knowing exactly what they wanted.

With regard to the deficit in the revenue the majority

of Congress would listen only to a further increase of the tariff, with a ludicrous uncertainty as to results. Mr. Dingley, chairman of the House committee of Ways and Means, estimated that the proposed tariff would produce in 1897, \$113,000,000 more than that of 1896. Mr. Aldrich of the Senate committee on Finance said that it would produce a deficit of \$29,000,000 for the fiscal year. To avert such deficit he made an urgent plea for a new revenue duty on tea and an internal tax on beer, both taxes to stand till 1900.

The committee believe it to be an important duty of Congress to provide, in the measure under consideration, for a revenue which will certainly meet the requirements of the government for the next fiscal year. The adoption of a revenue bill which should fail in this purpose and which should create an additional deficiency in the immediate future would certainly be fatal to the hopes of future success of any political party responsible for such legislation.

The Senate immediately rejected all the proposed new revenue taxes and the conference committee framed the bill without them. Upon this a leading journal remarked:—

The action of the present Congress places our government again in the ridiculous position of a business institution which does not know how to manage its own finances.¹

The reader who has followed the reasoning of this book as to a government by legislature without executive head will have no difficulty in explaining this as well as the events which followed.

¹ *New York Nation*, July 27, 1897. The same paper observed, under date of March 4, with reference to the Vice-President and therefore the presiding officer of the Senate: "Mr. Hobart's opportunity is great. Let him really preside. By doing so he would rescue the vice-presidency from traditional obscurity and helplessness, and make it a great and beneficent office." We have pointed out (Chap. XVII.) the reasons why this is impossible. The character and functions of the office may drag any man down. No man can raise it, at least under present conditions, in its relation to the Senate.

When Congress adjourned on July 29, 1897, it had done nothing to meet the expectations of the country; and there was a palpable certainty that another session would pass in precisely the same way. Nearly one year of the four had elapsed before the next presidential election. In 1898 a new election of representatives was to take place. It became more and more evident that the party having the responsibility of government was drifting on to overwhelming defeat, no matter how reckless and irresponsible might be the party in opposition seeking to replace it. In this state of affairs the former party did precisely what the Girondists did in France in 1792, under similar though far worse circumstances. They determined to settle domestic difficulties by plunging the country into foreign war.

One great change in the conduct of government had taken place. At the end of Mr. Cleveland's term the members of both houses of Congress had almost ceased to visit the White House. They had found it useless and nursed their wrath in silence. But with the new President the relations between the two branches became most cordial. There was quite different material to be worked upon. One indication was very early given. Hon. John Sherman was made Secretary of State and his place in the Senate handed over by appointment of the governor of Ohio to Mr. M. A. Hanna, the creator of the President's fortunes.¹ The new Secretary, whose age of seventy-four years and mental condition were at once guarantees and excuses for incapacity, remained in office for a year, an

¹ The regular election of Mr. Hanna by the Ohio legislature a year later to succeed himself involved one of the fiercest and closest conflicts of political intrigue which any State has ever seen. Upon this, one journal observed: "In Ohio, as in Pennsylvania, New York, and Illinois, party machinery has come to be stronger than public sentiment; and it is to be feared that money contributed by corporations is a more potent influence than enthusiasm for political principles or for trusted leaders." (*Review of Reviews*, February, 1898.) Compare what has been said in Chap. XVII. as to the composition of the United States Senate.

absolute cipher in one of the most delicate crises of the country's history, and then retired to make way for the assistant secretary, who might be a heaven-born genius, but was absolutely unknown to and commanded no confidence in the country.

The message of President McKinley at the opening of the regular session of Congress on December 6, 1897, reviewed the Cuban question at length, stating that Spain had improved her conduct in many respects, that she ought to have time and freedom to complete the work, but that if she failed to do so intervention on our part might become necessary, and concluding with this sentence:—

If it shall hereafter appear to be a duty imposed by our obligations to ourselves, to civilization and humanity, to intervene with force, it will be without fault on our part, and only because the necessity for such action will be so clear as to command the support and approval of the civilized world.

It seems strange that a man in the President's position should solemnly put forth such a declaration to the world, knowing that the matter was practically beyond his control, and that he had no guarantee whatever for such discretion on the part of Congress.

From this time until April 11, that is to say, four months, there was no public and authentic utterance on the subject from the President or anybody responsible to him, his speech at a banquet in New York on February 3 turning wholly upon questions of finance. On the 19th of January Mr. Hitt, a member of the House of Representatives and chairman of the committee on Foreign Affairs, made a speech in the House upon which a New York paper commented as follows:—

He spoke after repeated consultations, and distinctly foreshadowed the President's policy. When he affirmed that Mr. McKinley would "not disappoint the expectations of his countrymen," and set the galleries applauding this sentiment, he made it clear that the admin-

istration contemplates intervention — forcible intervention if need be — in Cuban affairs. . . . Congress was to remember that there was “a faithful pilot at the helm,” and was to be patient and ready to support him if he takes the step which the House and the interests of the country may demand. If that does not signify that Mr. McKinley contemplates forcible intervention, and that speedily, words have no meaning.¹

Imagine the responsible executive head of seventy millions of people allowing his hand to be forced in this way by a perfectly irresponsible member from a congressional district declaiming in the presence of a mob in the gallery many times outnumbering the House itself, and shouting applause.

We come now to the most salient feature in the progress towards war.

On January 15, 1898, the Atlantic squadron, a very formidable fleet, and regarded as in fighting power actually superior to the entire resources of the Spanish navy, sailed from Hampton Roads in Virginia to the Dry Tortugas, about one hundred miles from Havana. On the 25th, by order of the Navy Department, the battleship *Maine* took leave of the rest of the fleet, and proceeded to the harbor of Havana. There had been serious riots in the Cuban capital, and it was considered that the American consulate and the interests of the United States in general would be better safeguarded by the presence of an American man-of-war.

The Spanish government had formally expressed its entire acquiescence in this plan, although the movement looked enough like the entering wedge of a policy of intervention to occasion much hostile comment on the part of the Spanish newspapers.²

Upon this it may be observed, from ordinary knowledge of history and human nature, that the arrival of the *Maine* was certain to cause more trouble than it would cure. The fact that the whole United States fleet was only one hundred miles distant was an amply sufficient warning to the Spanish authorities to keep order if they possibly could; while if the population was unruly the presence

¹ *Nation*, January, 27, 1898.

² *Review of Reviews*, February and March, 1898.

of a United States ship was the one thing certain to render it impossible for them to do so. As a New York paper observed:—

No American men-of-war have visited the harbor of Havana for more than two years, and the reason was not concealed. We wished not to offend Spanish susceptibilities. We also wished not to provoke American inflammabilities. . . . What has moved the President to take this step now? There is much guessing, but the strong probability is that he was told he had to do something to appease the Republicans in Congress. . . . The open expression of joy and relief uttered by Republican congressmen when they heard of the sailing of the *Maine* bears out this view. . . . If the Spanish are excitable, what is our press; what are our legislatures, our Congress? A war-ship is a curious kind of oil to pour on troubled waters, though the administration would have us believe the *Maine* to be the most unctuously peaceful ship that ever sailed.¹

If war was the object nothing could have been more effective. Between nine and ten o'clock on the night of February 15, the *Maine* was destroyed and sunk by an explosion in the harbor of Havana with a loss of two officers and the majority of the crew. As no one event throws more light on the character of the war it deserves careful study. The cause of the explosion was of course of vital interest, whether it was internal and therefore accidental, or if external was caused by Spanish officials or by the act of irresponsible conspirators. We will discard probabilities and look only at the facts. A naval board of inquiry was ordered upon the part of the United States. It is doubtful if any tribunal in either country could have impartially weighed the evidence, but it was perfectly clear that this one could not. Its members were no doubt honorable and high-minded men, but they were subjected to a strenuous bias: first, to defend their professional brethren, who might have suffered discredit if the explosion was internal; second, from knowing the temper of Congress and the press which they had to encounter; and

¹ *Nation*, January 27, 1898.

third, from the fact that the accused party was already a declared enemy.

Of sixty-one witnesses examined, fifty-two were in the service of the United States government and forty-three of those were attached to the *Maine*. The evidence turned almost entirely upon the state of affairs on the *Maine* before the explosion or on the condition of the wreck afterward. No rebutting testimony was heard, no cross-examination by anybody representing the defence. After twenty-three days the board reported that the evidence showed the explosion to have taken place from the outside, but that they could not fix the responsibility upon any person or persons.

The Spaniards also made a report. It rested upon two assumptions. The first was that an explosion from the outside sufficient to have destroyed the *Maine*, encountering no resistance in any other direction except the water, must have caused a violent upheaval of that element and a powerful concussion of other vessels. There were two explosions on the *Maine*. It was admitted on all sides that the second took place in the magazine. The exterior one could, therefore, only have been the first. Not only did every witness examined by the Spaniards deny having perceived any concussion, but of the nine outside witnesses examined by the American board only one, an English captain of a bark, felt anything and he sitting in his cabin described it as if his ship had been collided with. Two of those witnesses were merchants, passengers by the steamer *City of Washington*. Standing on the deck three hundred feet distant, according to the testimony of the captain of the steamer, though the captain of the *Maine* described it as two hundred yards, they witnessed both explosions. It was a calm still night. They testified separately that neither of them perceived any shock or upheaval of the water from the first explosion, and the same testimony was

given by the first officer of the *City of Washington*, who witnessed the explosion from the gangway. The captain of the same steamer, standing on her deck and witnessing both explosions, said that he felt no trembling of his ship from the first of them. No witness examined by the board testified that he did perceive any such upheaval, though two officers and a seaman on the deck of the *Maine* declared positively that they did not.

The next argument advanced by the Spaniards was that all explosions on public works in the harbor had been accompanied by numbers of dead fish floating on the surface, and that a search early on the following morning had revealed none. The only question put by the American Board of Inquiry on this point was to the English captain above referred to, who replied that he saw no fish.

It seems to be admitted that every aid was rendered by the Spanish ships of war with their boats in rescuing the wounded; and that the funeral ceremonies of the dead were attended by almost the whole population of Havana in silent and respectful sympathy. The Spanish government, expressing great regret for the event, distinctly offered to submit the whole case to arbitration.

With reference to the question of fact, which results from the diversity of opinion between the representatives of the Spanish and North American commissioners, the government of Her Majesty, which as yet does not know the official text of those opinions, has hastened to declare itself ready to submit the question to the decision of impartial and disinterested experts, accepting in advance the decision of the arbitrators named by both parties.¹

Putting the worst possible construction on the Spanish side of the case there was at least doubt enough as to the culpability of any responsible persons to require, upon all the principles of civilization supposed to have been reached in the nineteenth century, the acceptance of arbitration.

¹ Note of the Spanish minister Polo delivered to the Secretary of State, April 10, 1898.

This was so evident that for a few weeks the matter remained quiet. But the fury of the violent faction in Congress and of the sensational press could not be restrained. The occurrence was charged as an act of deliberate treachery upon the Spanish government and people, for which vengeance was the only possible satisfaction, and 'Remember the *Maine*' was used as a slogan to stimulate the most ferocious passions.

On the 7th of March, eleven days before the President sent to Congress the report of the Naval Board of Inquiry on the *Maine*, and while the country was trembling with excitement, a bill "to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1897" was introduced in the House of Representatives by Mr. Cannon, chairman of the committee on Appropriations, and referred to that committee. On the 8th the bill was reported back from the committee with the following items :

For printing and binding	\$66,000
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NAVAL ESTABLISHMENT

Bureau of medicine and surgery	\$10,000
Equipment of vessels	\$100,000

NATIONAL DEFENCE

For the national defence, and for each and every purpose connected therewith, to be expended at the direction of the President, and to remain available until January 1, 1899	\$ 50,000,000
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The report was received "with loud applause" not only by the House but by the spectators in the gallery. This enormous sum constituted but one item among a number in a general bill.

How far this was in accordance with the wish of the President, or how far compulsion was applied to him by the violent faction in Congress, will probably never be known. Certainly, he made no formal or public request

for it. It was confidently reported in the press as made by him in private interviews with members of Congress, which leaves the question still entirely open. The bill was passed at a single sitting, with no debate except a few rhetorical flourishes, and by a vote of 313 to 0. In the Senate the same bill was reported on the next day, March 9, and passed in one sitting and without a word of debate by a vote of 76 to 0. If it is remembered that only twice since the Civil War¹ has Congress been unanimous about anything, and that if in 1896 Great Britain had taken up our challenge in the Venezuela case as Spain did in the Cuban, it would have been the former country with which we went to war, it seems not unfair to assert that the object aimed at was not war with Spain or on account of Cuba, but war for the sake of war.

Upon this vote — and the date must be carefully kept in mind — a journal remarked: —

The country has now voted fifty millions for national defence, but against what or whom must we defend ourselves? No man speaking with authority at Washington or anywhere else has said. We are absolutely in the dark as to who is going to attack us, or why. . . . Whatever favored congressmen may know or suspect, whatever the President's advisers may keep locked up in their breasts, the people, as a whole, have not one authentic word to guide them as to the policy of the administration respecting Cuba, either in the past or in the future.

It is safe to assert that no monarch or minister could get from the merest semblance of a Parliament fifty millions for war purposes without one lisp why it was asked for, and against whom. Mr. Cleveland, at the time of the Venezuela upheaval, asked for only one hundred thousand dollars, but even for that trifle he felt compelled to lay the whole correspondence before Congress.²

It may be worth while also to note the cheerful observation of another critic.

No part of the fifty million dollars will be squandered by the administration.³

¹ See Chap. XXI.

² *Nation*, March 17, 1898.

³ *Review of Reviews*, April, 1898.

The first-named journal also said:—

The framers of the Constitution dreaded a powerful executive. They believed that specific appropriations should be made by Congress because, as Story puts it, "if it were otherwise, the executive would possess an unbounded power over the public purse of the nation." We have changed all this, and the unquestioned grant of fifty millions by Congress to the President to be expended at his discretion is only the embodiment of a tendency which has long been plain to every observer. The American people no longer fear the executive, and they no longer trust the legislative body.¹

We should put a somewhat different interpretation on the particular event; namely, that the legislative body having secured entire possession of the government and reduced the executive to be a mere tool in its hands, forced this large and indefinite appropriation upon him, with the intention of compelling him to expend it in carrying out its purposes, or rather those of the most violent faction dragging the rest after them.

Still there is no doubt of the tendency of public opinion to the side of the executive against Congress, illustrating our contention that the battle of the future is to be between these two branches, and that there are only two alternatives open to us: either an executive strong enough to govern, and responsible to public opinion, or such an executive responsible only to the private and class interests surrounding and controlling it.

On the 11th of April, after the greatest anxiety and suspense on the part of the country, the President sends a message to Congress, in which, after arguing the case at length, he concludes by asking Congress for power to put a stop to the strife in Cuba and secure the establishment of a stable government, and for that purpose to use the military and naval forces of the United States.

The issue is now with Congress. It is a solemn responsibility. I have exhausted every effort to relieve the intolerable condition of

¹ *Nation, loc. cit.*

affairs which is at our door. Prepared to execute every obligation imposed upon me by the Constitution and the law, I await your action.

Yet in this very same message, after referring to the offer of arbitration on the part of Spain which we have mentioned, he says, "to this I made no reply."

Upon this we will merely quote the Washington correspondent of a foreign magazine.

The message is thoroughly characteristic of the President. . . . It is the province of Presidents to lead their party—in an international matter to lead the country—not to follow and be subordinate to Congress. The last is the position in which the President has placed himself. He has abdicated his leadership by failing to make any positive, definite, or unmistakable recommendation, which would blaze through the jungle of an embarrassing situation so that Congress could follow him without question. The men who rate country higher than party are wandering in uncertainty. They are willing to follow the President, but they do not know where he proposes to lead them.¹

Early in the morning of April 19, Congress adopted a preamble and resolutions, in substance as follows:—

1. That the people of the island of Cuba are and of right ought to be free and independent.
2. That it is the duty of the United States to demand and they do demand, that Spain shall retire with her land and naval forces from Cuba and Cuban waters.
8. That the President is directed and empowered to use force for this effect.

The fourth resolution is so important that we give it in full.

4. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination when that is accomplished to leave the government and control of the island to its people.

There could hardly be a stronger illustration of the anarchy, the want of policy or purpose, in a government by legislature, than that a declaration of war should be

¹ *National Review*, London, May, 1898.

accompanied by such a manifesto as that. How could Congress possibly bind the future? Suppose the withdrawal of Spain should leave two hostile elements fighting each other. Suppose no stable government could be found in Cuba. Suppose that combinations for private gain or intrigues for political power should compel Congress to contradict itself. The country would be an object of reproach and derision to the world. Why should the statement have been made? Was it in deference to the President's reply to the joint note of the envoys of the six powers on April 7, referring to "the earnest and unselfish endeavors of the United States to fulfil a duty to humanity, by ending a situation which has become intolerable," or was it an attempt to put the war on a high moral plane before the country? There is in it a reminder of the self-denying ordinances of the Long Parliament in England and the National Assembly in France¹ which throws a curious light upon the similarity of the circumstances.

The conduct of the war under the management of Congress and an executive controlled by party politics may be left to tell its own story, but one political feature will be presently referred to.

One of the most momentous questions which can be raised as to the character of democracy and its future in the world is whether the people of the United States as a whole approved of and desired this war. The question must be divided into two parts, for the period preceding and that following the declaration of war. Even as to the first the verdict of the educated and prosperous class was in the affirmative. It was asserted that Congress, which is assumed to represent the people, was, as was shown by its votes, almost unanimous in favor of the war; that congressmen were overwhelmed by letters from their constituents urging them on to war, and reported the sentiment

¹ See Chaps. IV., VIII.

of their districts as in the same direction; that the newspapers almost without exception took strongly the same side; that the majority of the clergy advocated it as a war of humanity; that wherever workingmen were congregated in large numbers, as in factories, etc., they were enthusiastic in its favor; that no public meetings were anywhere held in protest against it or on behalf of peace.

We maintain that, granting all these things to be true, though they may cut off a denial, they furnish no positive evidence whatever upon the main question. It has been remarked throughout this work how immensely difficult it is to get at the sentiment of the mass of the American people, meaning the millions who take little direct interest in politics and are hard at work in getting a living, and how easily the outcries of noisy groups are mistaken for the expression of that sentiment.¹ Let us take the above points separately.

We have urged the value of a presidential election as the only thing, especially under our method of government procedure, approaching a test of national public opinion.

¹ One thing is very curious indeed in all this matter, and that is the scanty evidence of American opinion which reaches Europe. What do all those quiet millions of working freeholders and industrious citizens who live away from newspaper correspondents think about the progress of the war? Are they aware that their country stands at the parting of the ways; that her external policy must be radically modified; that she is engaged in a war which may so develop that it will occupy years, create a national debt, and leave the United States with a powerful army and the second fleet in the world? Do they think of peace, or have they made up their minds that there shall be no peace until Spain begs for it and surrenders her colonies as a measure of conciliation? Above all, have they thought of the possibility of the war extending, and of what, in that case, they will order their government to do? So far as Europe knows there is no answer to these questions. A little is known—very little—of what the American government thinks, a little more can be gathered from the votes of Congress, and a little more still from the press of the seaboard cities; but of the real opinion of that vast silent democracy, always producing, always storing up power, nothing whatever is revealed. — *Spectator*, London, July 2, 1898.

Now the election of President McKinley in 1896 certainly did not turn upon any question of war. So far as it was not carried by sheer bribery, it turned upon gold and silver, the currency and the tariff, and the fear of anarchy supposed to be involved in the Chicago platform. No President, not even Lincoln who came nearest to it, has ever availed himself of the enormous force to be derived from a direct appeal to his constituents of the nation. Mr. Cleveland, who came to what was practically a direct quarrel with Congress, left office without touching the spring which might set loose the torrent of public opinion.

If, when Congress was fiercely driving Mr. McKinley on to break off negotiations with Spain, the President had issued a short address to the people of the United States, stating how delicate the negotiations were, the importance of maintaining peace and his own anxiety for it, and asking for time, forbearance, and support; such an appeal, whether they liked it or not, would have been printed by every newspaper in the United States. We believe that there would, and there certainly might, have come an outburst of public opinion, before which even Congress would have quailed. In that critical period between the report of the Naval Board of Inquiry on March 18 and the President's message to Congress on April 11, while it was still believed that the President was striving for peace, resolutions were passed by numerous organizations, commercial and other, urging Congress to support the President. It is to be noted, further, that the great American Federation of Labor, through its president, declared itself strongly in favor of maintaining peace.

The following is from the daily correspondence from Washington which appeared throughout to be among the fairest.

Anger at the telegrams from business men asking them to stand by the President and rising feeling among congressmen over the *Maine*

disaster were among the factors that produced the new resistance to the President.

Senator Foraker, himself a member of the Foreign Relations Committee, was reported as enraged by telegrams from Cincinnati and other Ohio business men asking him to support "the President's wise policy," and to have replied to sixty of them that he would be glad to support the President's wise policy if he knew what it was. . . . Rude replies have been telegraphed to-night to leading business men in Western cities who ask some of their representatives to support the President. . . . But no one away from here can realize the pressure Congress is making on him for either a warlike recommendation or none at all, but a message that will make warlike action justifiable by them.¹

Instead of taking the course above suggested the President simply threw the responsibility upon Congress, which was only too glad to assume it.

As to the action of Congress representing the will of the people, we have stated the reasons for believing that it does nothing of the kind;² that it represents only the politicians who get control of the nominating conventions and distribute the offices at their pleasure; that the only choice exercised by the people is between two sets of these politicians labelled Republicans and Democrats, carrying no weight of individuality, and of whom the former have held control of the government for thirty years, simply from the impetus of the Civil War, aided by the fact that a change to the Democrats offered no prospect of improvement. We believe further that opinion at Washington is wholly distinct from that of the country, and that a few violent party leaders exercise a greater control over the whole body of Congress than any amount of local opinion scattered and disunited through the mass of constituencies. As for senators, provided their legislatures are held in due control, they care very little for general opinion in the

¹ H. MacFarland, Washington, to *Boston Herald*, April 5.

² See Chap. XVIII.

States, and need take no trouble whatever to inform themselves about it.¹

This involves the further question, what importance must be attached to reports of members as to their constituencies. Suppose that every member and senator received, between February 1 and April 21, one thousand

¹ To what influences both branches were exposed may be judged from the reports in the newspapers. The following describes a scene in the Senate on Thursday, April 14, three days after the President's message had been sent in:—

"The speeches were interspersed with sharp and spirited colloquies, some of which caused great excitement in the galleries. Many times the applause both on the floor and in the galleries was tumultuous. A few minutes before adjournment, a genuine sensation was created by the efforts of the Vice-President to subdue the applause induced by the attempt made to prolong the session until a vote could be taken. Vice-President Hobart directly addressed the galleries and ordered that the applause should cease. Nearly every senator was on his feet, and the main aisle in front of the president's desk was crowded with senators. 'The Chair himself is out of order,' shouted Mr. Gray, 'he has no right to address the people in the galleries.' 'Such a thing was never done before in the Senate,' declared Mr. Bate of Tennessee. 'The applause was started by senators on the floor,' some one shouted from the crowd in front of the president's desk. 'I started it myself,' explained Mr. Mason, of Illinois, 'and am prepared to assume the responsibility for it.'" (Washington correspondence of *Boston Herald*, April 15.)

That is to say, in the dignified Senate of the United States, made up of representatives from the sovereign States, members not only do not object, but demand, that the nameless crowd in the galleries, many times outnumbering the body, shall be permitted to take part in its proceedings and stimulate its passion; and not a single senator rises to protest. The state of things in the House is even worse. Day after day a crowd of spectators, probably five times more than the members of the House, assembles in the gallery and shouts applause for the speeches which suit it and hisses what does not, while even the iron Speaker, Mr. Reed, who has obtained the name of *tsar*, dares not interfere. Here is a report of one day, March 30:—

"There was a wild and tumultuous scene in the House to-day, when Mr. Bailey, the Democratic leader, attempted to force the hand of the Republicans upon a proposition to overrule the Speaker and pass a resolution recognizing Cuban independence. Mr. Bailey was cheered on by the crowds in the galleries, but the members of the majority refused to support him, although many of them sympathized with the purpose of the resolution. . . . The scene throughout was most dramatic, and the

letters in favor of war more than those in favor of peace — which is certainly an excessive estimate. That would make only four hundred and fifty thousand out of twelve millions of voters. What were the other eleven and a half millions thinking about, not to speak of the sixty millions who do not vote but are entitled to have their interests and wishes considered? Again, it may be doubted whether any member of either house of Congress ever sees or hears directly from five per cent. of his constituents. Of the remainder he knows nothing whatever and his testimony as to their feelings or wishes is of no value. And this is the more evident if we consider that the last congressional election of 1896 did not turn at all upon the question of war or peace, but upon certain financial issues put forward by the two parties.

It is said, if Congress does not express public opinion, where are we to look for such expression? The reply is in the whole argument of this book, that Congress has come to regard itself and to be regarded by the country, with equal falsity in both cases, as being the whole of the government; that under that misconception it has adopted a procedure which makes the government a mere matter of log-rolling and lobbying, out of sight of the people, without leadership or any individual responsibility, and making the administration of the vast interests of this great nation the mere sport of private interest and intrigue. We have urged that such a course must eventually lead to a military despotism, to be averted only through the establishment of a

members and the spectators in the galleries were wrought up to the highest pitch of excitement. . . . The reading was listened to amid a silence profoundly impressive, and at the conclusion cheer after cheer was given from the galleries and floor. The Republican side was ominously silent. The Speaker rapped vigorously for order."

To find a parallel to such scenes we must go back to the first French Revolution. The mob is not starving or as fierce as the Paris mob was, but the principle is the same. It is the negation of government.

strong but responsible executive. And this raises a question whether it is not even now too late, the startling development of events tending to verify the prediction with a rapidity which the wildest imagination could hardly have compassed.

It is safe to say that the world has never seen an exhibition equal to that made by the press of the United States in the first half of 1898. There was a flood of pamphlets and papers of unbridled license in the first French Revolution, but the percentage of reading population in France was of course much less. One or two of the New York papers are said to have reached a daily circulation of over a million, and the total for the United States must have been enormous. Almost without exception they were, with more or less of violence, on the side of war. Even the most conservative limited themselves to a timid balancing of arguments for and against. Of the journals maintaining a firm and decided opposition there were perhaps not more than a dozen. Everything that headlines with block letters of two or three inches in length and the modern facilities of coarse illustration could do was done to stimulate passion and excitement.

Still we maintain that this proves nothing. It was a mere commercial speculation. One journal remarked upon the curious contrast presented between the attitude of the papers and that of the crowds which were reading them. The papers exploited the war as they had the murders, suicides, divorces, railway accidents, and cyclones of peace. It is to be noted, further, that the press is in the hands either of young men seeking notoriety or old men seeking gain. A press with any sense of responsibility for the guidance of public opinion does not exist, and for the simple reason that it has itself no guide. The absence of leadership tells upon the press exactly as it does upon the country. There are no statesmen with a wise and firm

policy appealing for support. A violent faction sweeps away Congress, and Congress sweeps away the press. A feeble executive playing into the hands of the legislature furnishes no adequate centre of resistance.

The same remark applies to the argument that no peace meetings were held throughout the country. There was nobody to take the lead. As has been pointed out, the system of doing everything by committees, commissions, and legislature has killed all individuality, at least of the right kind. No man dares to advance an opinion till he has been nominated by a convention, and then he is expected, and is only too willing, to express the opinion of the convention and not his own. No man has confidence in himself, or commands confidence in others, enough to enable him to stand forth as a representative of public opinion. From every part of the country private letters and reports abounded that there was no general war feeling in each part, but on the contrary a strong opposition, though, curiously enough, each section was disposed to take a contrary view of the others. This want of concert of action, of all crystallizing force of opinion, is one of the worst effects which our failure of government has produced upon the country.

To the confident assertion that the war feeling was strong among workmen in factories we reply that no proof is offered, the noisy minority being easily taken to represent the whole.

The hardest fact to be encountered is the attitude of the clergy, the majority of whom, so far as reported, were decided advocates of the war, and their influence over the people is certainly very great. Allusion may be permitted to the defective sense of proportion in this class, a single moral dogma being seized and insisted upon to the disregard of other considerations, which, though far outweighing it in importance, may be less direct and more

complex. The relief of the Cubans from Spanish oppression was an admirable text for pulpit eloquence, as also the possibility of christianizing the Philippine Islands. The consequences of such a war to this as well as future generations in this country and to the world, involving a superficial appearance of national egotism and selfishness, were much less available. Their entire sincerity of purpose need not be questioned, but only the judicial quality which is certainly not the strongest characteristic of the theological mind.

If that is true, which, while affirming that it has not been proved we do not undertake to deny, that the majority of the people of the United States favored the war, large excuse is to be made for them. The powerful agencies described were all at work to manufacture that kind of public opinion. There was not one of anything like corresponding force to present the other side. When Senator Proctor of Vermont, after a visit to Cuba, being himself wholly irresponsible for the consequences to the government and the country, presented in the Senate on the 17th of March — just at the time, be it noted, when attention was strained for the report of the Board of Inquiry on the *Maine* — a ghastly picture of the state of things in Cuba, deliberately calculated to inflame the pity and indignation of the country to the highest point; if at that time he had been followed by an executive official of such authority that his speech would have been reprinted in every leading newspaper; if that official had made a calm but detailed and forcible statement, pointing out that intervention would produce even in Cuba more evils than it would relieve, and entail infinite disaster upon this country, then a press and a people which would not listen might have been reproached with undue haste and passion.

A parallel instance appears in the case of Armenia. When all Great Britain was boiling with indignation at

the crimes perpetrated by Turkey, an executive ministry, responsible for the conduct of government and with a firm grasp of the helm, guided the country through a crisis which might have overwhelmed Europe with disasters many times worse than those of Armenia, while affording no relief to the Armenians themselves. It is not the first time that such an executive ministry has saved Great Britain from the horrors of war. It is to be feared that this is not the last time that the American people will pay a heavy penalty for acquiescing in the practical suppression of the executive and the abandonment of government to an irresponsible Congress far from effective control.

When war was once declared, there can be no question that the people were almost unanimous in support of the government, and the fact is distinctly to their credit. It may be a poor government, but it is all they have. They know nothing of the constitutional questions involved, the weakness of the executive, and the despotism of the legislature. They know, indeed, very little of the facts of the case. Their government, which they have been brought up to reverence, decides that war is necessary and calls upon them for sacrifices which they freely make. It is only another instance how much more powerfully government affects the character of a people than a people does that of its government.

One episode of the war is of such political importance that it must be mentioned. As a part of the conflict with Spain Commodore Dewey sailed with some ships from Hong-Kong, and on the first of May boldly entered the harbor of Manila and destroyed the Spanish fleet. Behold the United States at once launched into the full flood of the Eastern question. A new word, 'Imperialism,' is in every mouth. The war party, the noisy or Jacobin group, shouts with exultation. Now we are to take our place among the nations. Our strength and our riches must

be applied to creating a navy and an army strong enough to make us secure from all attack ; in other words, to dictate law to the world. The conservative mass, timid and disorganized, appeals in vain to our past history and traditions, the dangers of centralization, of a large standing army and navy, of foreign complications changing our peaceful republic into a military empire, the warnings of Washington's farewell address, the subversion of our local governments and our individual liberties.

If any weight is to be attached to the doctrine of this work as to the effect of government by a legislature, it is easy to foresee which of these groups must prevail. It is still more easy to foresee that when once power has fallen into the hands of men of the sword, they will become impatient of the talking and intriguing body which hampers their operations and will proceed to set up the first necessity of a military empire, — a military dictator, to whom the people of the States, having been carefully trained to passive submission, will offer no effective resistance. The significance of the fact cannot be overrated, that whereas the annexation of Hawaii, that group of islands two thousand miles away in the Pacific Ocean, had thus far been steadily resisted, in the light of this new policy it was at once adopted by Congress and the President.

There is but one hope of escape, — the strengthening of the legitimate executive power, which, as the instrument of the people's will, shall interpose a firm barrier of resistance. How this may be accomplished and its relation to parties will be considered presently. At this point a few reflections suggest themselves in connection with these events. And first, as to the power of the Speaker of the House. It was considered a great triumph that Mr. Reed had got the mastery of that body, could use his power to suppress debate, could make up the committees and pro-

mote or hinder legislation at his pleasure. But Mr. Reed was still the slave of the majority. All that he did was to train that majority to complete intolerance of any resistance to its will. Accordingly though Mr. Reed was strongly opposed both to the war and the annexation of Hawaii, he was borne down like a bulrush by a flood. The party Speaker is, as has been pointed out, a totally different authority from an executive official, representing the President and the country, wholly independent of Congress, and holding that body in a wholesome attitude of respect, and backed, moreover, by a Speaker whose function and pride it would be to keep the House in order and protect the rights of the minority and the freedom of debate.

It may be said, again, that the view of the President's power stated in Chapter XVI. is flatly contradicted by the events of 1898. But the contradiction is only apparent. The President acted throughout as the mouthpiece of Congress. In fact, from the outset in the Spanish question, he assumed the attitude of not desiring either war or conquest, but of yielding to the will of the country; while he looked to Congress and the newspapers as the exponent of that will. A year ago Speaker Reed was supposed to be omnipotent in the House of Representatives. But the moment he undertook to oppose the decided will of that body, it passed over him like a locomotive. Nor is the force of this reasoning at all weakened by the undisguised exertion of social and personal influence by the President with senators and others to induce them to give the lead which he was prepared to follow. The real development of the President's power must be accompanied by some adequate provision for the enforcement of public responsibility both upon himself and the members of the legislature.

The next point to be noted is that intense thirst for personality which is the leading characteristic of a democ-

rary, but which all our efforts are directed to suppressing. When the news came of the victory of Commodore Dewey in Manila harbor, the whole country went frantic with delight. He was at once named for the rank of admiral, the newspapers resounded with his praise, and his portrait by the hundreds of thousands appeared in every shop window and in many private houses. We maintain that a statesman, standing up in resistance to Congress and fighting a determined battle on behalf of justice, humanity, and civilization, would arouse an enthusiasm, if not as impetuous, yet more deeply rooted and more sustained. Is it not fearfully significant of the future of this country, that such honors can be won by military and naval success, while a public career in civil life, under its existing organization, carries with it little but the stamp of disgrace?

A third point is as to the superiority of the federal administrative system of single individuals, appointed from above down, and that of the States, with popularly elected officials, not only civil but military, and their impersonal committees and commissions. In West Point and the Naval Academy the federal government possesses a source of supply of officers, who compare at least fairly well even with those of professed military countries, while the regular army and the navy are, so far as a civilian can judge, very good of their kind. But the same can by no means be said of the volunteers as a whole, either officers or men, from the States. It may be urged that a militia cannot be equal to regular troops. But if it exists at all it should be qualified as far as it goes, and it costs enough to be much more efficient than it is. Again, it is an evil omen that the only effective military force in the country should be in the hands of the federal government and the men who control it, especially if that force is to be largely increased with a view to possible foreign complications, and, if volunteer service should fail, is to be recruited by

a conscription. The only possible safeguard against such danger would be in increasing the strength of the State governments and their power of mutual combination. The danger of consequent collision with the federal authority must be met by strong and responsible executives, combining firmness with conciliation, and animated, as the result of combined watchfulness both by legislatures and people, by an earnest purpose to secure the highest degree of public welfare.

A fourth point must not be overlooked in the absence of public and personal responsibility in the executive heads of departments, the President's Cabinet. The Secretary of War, Hon. Russell A. Alger, a rich lumber merchant of Michigan, had been governor of the State, but was certainly not known to the country as possessing any special qualities either statesmanlike or administrative. There seems to be no doubt that his appointment was for purely political reasons, among which it was currently believed that pecuniary aid extended to the President at an earlier date bore no inconsiderable share. Hardly were the preliminaries of peace signed when a tempest of denunciation burst upon the unfortunate Secretary for alleged mismanagement and neglect in the supply and arrangements for the army. The charges were seized upon by the newspapers with the same avidity which they display for everything sensational. The country rang with their outcries, which as Spain was no longer available must have some object. The reasons which led to the appointment of the Secretary were equally powerful with the President against dismissing him, while the official himself stoutly refused to yield.

It would be difficult to produce a stronger illustration of the necessity of that for which we have argued,¹ — the admission of the cabinet officers to seats in Congress in

¹ See Chaps. XXX., XXXI.

substantial accordance with the Senate report of 1881. If that condition had been annexed to the office in the first place, Mr. Alger would never have been there. No man would dare to take such a place, or could possibly hold it, who was not fully competent not only to administer but to defend and give reasons for his administration. Mr. McKinley, again, would never have dared to make such an appointment for such reasons in face of the criticism of a vigilant opposition before the country. Instead of an investigating committee sitting for months and then making a report to be settled in Congress by a pure party vote, a short and sharp personal encounter would very quickly decide whether the Secretary must go or remain, and that with a clear understanding on the part of the country which would go very far towards keeping such matters straight in the future.

No details of administration or even of policy can be of any importance for the country to be compared at all with such a principle of government as this.

CHAPTER XXXV

CONCLUSION

IN the *Edinburgh Review* of October, 1840, Mr. John Stuart Mill published an article upon De Tocqueville's "Democracy in America," in which he thus sums up that author's conclusions:—

That democracy in the modern world is inevitable, and that it is on the whole desirable; but desirable only under certain conditions, and those conditions capable by human care and foresight of being realized, but capable also of being missed. He thinks it an inevitable result of the tendencies of a progressive civilization; by which he by no means intends to imply either praise or censure. No human effort, no accident, unless one which should throw back civilization itself, can avail, in his opinion, to defeat or even very considerably to retard this progress. But though the fact itself appears to him removed from human control, its salutary or baneful consequences do not. Like other great powers of nature, the tendency, though it cannot be counteracted, may be guided to good. Man cannot turn back the rivers to their source; but it rests with himself whether they shall fertilize or lay waste his fields. Left to its spontaneous course, with nothing done to prepare before it that set of circumstances under which it can exist with safety, and to fight against its worse by an apt employment of its better peculiarities, the probable effects of democracy upon well-being, and upon whatever is best and noblest in human character, appear to M. de Tocqueville extremely formidable. But with such use made of wise effort devoted to the purpose as it is not irrational to hope for, most of what is most mischievous in its tendency may, in his opinion, be corrected, and its natural capacities of good so far strengthened and made use of as to leave no cause for regret in the old state of society, and enable the new one to be contemplated with calm contentment, if without exultation.

Mr. Mill then states De Tocqueville's historical argument that in seven centuries aristocracy and class privilege

have been steadily dissolving; the development of riches and of material change has been tending to equality.

"The noble has gone down on the social ladder, and the commoner has gone up. Every half-century brings them nearer to each other.

"The Christian nations of our age seem to me to present a most alarming spectacle. The impulse which is bearing them along is so strong that it cannot be stopped, but it is not yet so rapid that it cannot be guided. Their fate is in their hands; yet a little while and it may be so no longer."

Certainly the force of these passages has not been diminished in the sixty years which have since elapsed. In our opening chapter has been described the advance, during that period, of universal suffrage. When De Tocqueville wrote there were practically no railroads, no telegraphs, and no ocean steamships, while perhaps the greatest marvel and the greatest leveller of all, the modern banking system, was in its infancy. The vast increase of facilities for travel and commerce and consequent international intercourse; the immense development of wealth and still more of its fluctuation and instability; the intermarriage of the proudest houses with the children of enriched day-laborers, — all are tending powerfully to bring humanity to a level, and to convert artificial distinctions of birth and rank into objects of contempt for all but their possessors.

Yet the problems described by De Tocqueville are looming up more portentously than ever. It is useless to consider whether aristocracy and a limited upper class produce the best results. Those things are gone and can never be replaced; at least till after convulsions which would destroy the present civilization. Can democracy be guided and controlled for its own good and that of the world? Or is it to be a devastating flood ever renewed and ever carrying desolation in its course? It seems a simple proposition that this is a question of government, of some power strong enough to repress evil forces and bring forward

good ones, and that success in this depends upon organization just as much as in any private enterprise.

It is somewhat curious that many of those who sneer most at any idea of bringing out the best and repressing the worst results of public opinion by means of improved organization are the most devoted to exaltation of our institutions as established by our fathers and to the practices which have grown up under them. They seem to forget that these institutions were themselves empirical methods of organization to be tested by results; and to overlook the fact that their most characteristic feature, a single executive head in president, governor, and mayor, has been neutralized and stripped of its real force and meaning.

The principles of organization of government involved in democracy in its modern form are two: the concentration and the diffusion of power; and its history is in the conflict of these. Starting with the most salient feature of this government, a representative body, the first tendency in all cases is to regard this body as being itself the government and to intrust all effective power to it, or, speaking more correctly, to tolerate its assumption of such power. We have shown the reasons why this never has worked or can work successfully.

The next step is to try to improve government by improving the quality of this representative body, through different modes of election, lengthened terms of office, less frequency or length of sessions, constitutional restrictions, etc.; all of which end in failure from the fundamental defect of intrusting the conduct of government to a more or less numerous body, with vacillating policy and want of steadiness in action and of personal responsibility. Then comes the attempt at improvement by increased diffusion of power through introducing the direct force of the popular will and the referendum as to particular measures, with

the effect of rendering confusion worse confounded; not of doing away with the intrigue and bargaining of the legislature but of consecrating their results by popular sanction.

The limit of diffusion of power having been thus reached is followed by a rebound to the other extreme of concentration of power, either in the hands of a military ruler as happened in Great Britain and France, or in the intermediate stage of boss rule, as illustrated in many States and notably in New York and Pennsylvania, not to speak of that other expedient for which Massachusetts is especially distinguished, — the concentration of power in numerous commissions, perhaps the most effective method of training the people to unquestioning submission to an invisible and irresistible force over which they have no control.

The problem which we have endeavored to present as involving the future of democracy is whether some mean term may not be found between that diffusion of power which, in a greater or less degree, results in anarchy, and that concentration of power which is popularly supposed, as in practice it for the most part has done, to lead to despotism. The first step to this end is to take care that the concentration of power is accompanied by a corresponding enforcement of responsibility, and the main question is to and by whom shall this responsibility be enforced. It will not do to intrust this to the legislature alone as in France and Italy, because this simply means the taking possession of the government by the legislature, that is, leads to the diffusion of power, which means anarchy. We have seen how even in Switzerland the evil is averted only by the peculiar circumstances of the country and the people; and how there also it has led to the popular referendum as to measures, which we have regarded as the extreme expression of anarchy.

Nor will it do to have the responsibility of the working

executive depend upon a single ruler by divine right as in Germany, as that effaces entirely the popular will. In a democracy, by the force of the term, the responsibility of concentrated power should be enforced by public opinion. It is very important that this should not be understood to mean the opinion of any groups or factions or class, but the average opinion of the whole people, including especially the great mass of those who, working hard for a living, can give very little time or attention to politics. This public opinion may be good or bad, but it alone constitutes democracy, and we cannot say that it is either till we are sure that it has been fairly tested, which it certainly never yet has been.

We have seen that the highest results of concentrated and responsible executive power have been obtained in England, yet even there the responsibility of the executive ministry is enforced by and to the legislature, the absorption of the government by the legislature having been averted by the power of dissolution held by the ministry. But even in England the want of direct appeal by the executive to the mass of public opinion, and the corporate character of the ministry checking the development of individuality which is the strongest instrument for reaching the mass of public opinion, are giving ground for uneasiness with the rising tide of democracy. Taking all the circumstances into consideration the highest political achievement of Great Britain is the at least fairly good government of India, where a single despotic ruler over three hundred millions of people is held under responsibility, more or less direct, to public opinion at home.

To arrive at the best results of democracy, therefore, there is needed a single executive head elected directly by the mass of the people. Accordingly, in the United States there exists the strongest and best machinery for a successful government of democracy that has ever been seen in

the world. Nowhere else, not even including the republics of Central and South America, does there exist or has there ever existed anything like a President of the United States, a governor of a State, or a mayor of a city. If we could only use the legislature for its proper function of enforcing the responsibility of the executive to the mass of public opinion, leaving to the people fully informed the decision at the elections, we should have the most effective instrument ever yet known for testing the quality of public opinion.

We have seen how the effect of this unique machinery has been neutralized through the grasping ambition of the legislature, which, as usual, has absorbed the power of government, has reduced the executive to be a mere agent for carrying out its orders, has by blinding and deceiving the people thrown the government into the hands of politicians inferior either in ability or character, and has plunged us into a state of anarchy which under the assumed theory can have but one result. The only hope of remedy lies in the rehabilitation of the executive and the remanding of the legislature to its proper functions. This will never be done by the legislature, which, by the terms of the problem, is uncompromisingly opposed to it. It can only result from an appeal to the people by the executive, which sooner or later must come in one of two forms: either constitutionally and with the preservation of a proper adjustment of power between the two branches, or by violent action of the executive, with tacit assent or impotence to resist on the part of the people, in abolishing the legislature, at least in substance, and the substitution of military force.

The greatest obstacle to the former method would probably be found in convincing the well-to-do and educated classes that the concentration of power in individuals is not the direct road to despotism, instead of the only means of averting it. In spite of the plainest evidence that their

stubborn adhesion to impersonal government by commissions, committees, and legislatures is leading straight to the boss rule which already prevails in, and is by no means confined to, the States of New York and Pennsylvania and their chief cities, these classes cling to the system with desperate tenacity. Attributing, in effect if not avowedly, all the evils which we encounter to universal suffrage, they seek to escape from popular control by greater diffusion of power and decrease of responsibility, thereby playing into the hands of the politicians who reap their advantage from these very things.

All the greater is the necessity that some individuals of sufficient strength of conviction and of will should pass over the heads of both and appeal directly to the multitude. As has been intimated, it must be done if at all within the States and with reference to their governments. It remains to be seen whether any such leader will appear before it is too late, armed with the requisite insight and courage, the ability and the spirit of self-sacrifice. One thing is certain, that never in the world was there a field better prepared for such an attempt.

The practical question for the United States — and it is with a view solely to that country that this book is written — is as to the conditions and possibilities of applying the principles herein advocated. We have spoken of party as the only instrument by which any work can be done and of the tendency to consolidate into two great parties.¹ The attitude of these parties is, therefore, a main point of consideration. In other countries the basis of division is largely property. The well-to-do and comfortable are naturally conservative and timid, while the ambitious and those seeking to better their condition are progressive. Such a division of course exists in the United States, but it relates to classes rather than to parties. The absence of

¹ See Chap. XXI.

a mediating power between the rich and the poor, enforcing peace and order while inspiring confidence that the claims of all will be impartially considered, and the dangers which such absence involves, have already been dwelt upon.¹

The division of parties as such has turned more upon the question of local self-government, that is, the relative independence of the States and the cities and towns within their borders, as against the federal government. When the Federal Constitution came to replace the anarchy of the old confederation great difficulty was found in overcoming the objections of the separate States, and this was finally accomplished by preserving their individuality in the Senate. From that time began the contest of parties between the Federalists, who were succeeded by the Whigs and the modern Republicans, on the one side, and the then so-called Republicans, who soon became and have since remained the Democrats.

Just as between the different branches of each government, both federal and State, there has been a continued struggle for supremacy, so the same conflict has been going on between the local and the national governments themselves, with a manifest advantage on the side of the latter. The tendency was foreshadowed in the national motto, *E pluribus unum*, as compared with what might have been, *In uno plures*. From the foundation of the Union the superior strength of the general government began to assert itself. Jefferson is supposed to have represented the democratic or local principle. But that is hardly correct.

The overthrow of the Federalists altered the character of the administration, but made little change in the immediate character of the government. It restored the supremacy of the civilian group, but they held fast to all the authority which now passed under their

¹ See Chap. XVIII.

control. The Jeffersonian Republicans proceeded to put down the army and navy and rid themselves as rapidly as possible of the burden of national defence, but there was no reluctance in enlarging the powers of government which had come into their hands. The Louisiana purchase was effected by an assumption of authority quite in Hamilton's style. Jefferson himself salved his wounded sense of consistency by recommending the adoption of a constitutional amendment expressly legalizing his act, but even his own Cabinet would not pay attention to his scruples. The embargo upon American commerce, which he ingeniously conceived as a dignified retaliation for the insults and injuries which his policy encouraged England and France to inflict, carried national authority to logical extremities to which the Federalists would not have dared to go. The Enforcement Act, passed to sustain embargo, was a greater interference with the ordinary privileges of citizens than would have been necessary in the exercise of war powers, and carried the exertion of authority to an extreme length. The executive behavior of Jefferson and Madison shows that they were willing to go to any length in the development of authority, so long as it was in its nature such as to remain in civilian hands.¹

The accumulation of power in the federal government was greatly aided by the weakness of the State governments which has been described.² For the present purpose we may pass at once to the period of the Civil War. In that conflict there were two principles involved; the one social, that is, the institution of slavery, foreshadowing the conflict which, unless government is strengthened in some way, is equally sure to come, the conflict between capital and labor, or, speaking more correctly, between wealth and poverty. The other principle was political; that of State sovereignty in its relation to the federal. The result was an immense accession of power to the latter, which, with the acquiescence of the people of the North, was for a large part of the time a military despotism. The so-called carpet-bag rule in the South continued till the term of President Hayes (1877-1881), and the Force

¹ "Rise and Growth of American Politics," Chap. X.

² See Chaps. XXII. and XXIII.

Bill of later date was an unsuccessful attempt to place State elections under direct control of the federal power.

The development of the Republican party into the supporters of a protective tariff tended in the same direction, drawing private interests to Washington to demand favors and to pay for them. The pension system, reaching out to individuals in the States, had the same effect. As a new generation grew up which knew nothing of slavery, that cause of war was gradually lost sight of, and there was left in men's minds only the tradition of an attack on the Union by centrifugal forces, and that Union became an object of stronger affection from the sacrifices it had cost.

But the greater the share in the government of the country which accrued to Washington, the more manifest it became that Congress as an instrument of government was wholly unequal to the task. Its failure to deal with internal questions, which led to the war, stands as an equal obstacle to the return of peace. The dread and dislike of grappling again with those questions will make the politicians unreasonable and exorbitant in the terms demanded from Spain. The final annexation of Hawaii will form the basis of new demands for the expansion of the navy. The retention of the Philippines, if accomplished, will have the great advantage, from the same point of view, that it will render permanent peace almost impossible; indeed, it will place the decision of peace or war wholly at the discretion of a few naval officers on the other side of the globe; though reliance upon them is probably safer than upon the United States Senate. These islands may easily involve a complication of alliances with European nations which will insure the devotion of the whole strength of the country to purposes of war, including military and naval conscription, for submission to which the patriotism of the country will be called upon until the application of

force is well established. One of the patriotic cries which has been raised is that the war has united us into one country as we have never been before, which is very true in the sense that it is annihilating the States and bringing the whole country into the same relation to Washington that France bears to Paris. The same process has been applied in the last thirty years to Germany with relation to Berlin, with this excuse, that Germany has for five hundred years experienced frightful suffering from political disintegration, which has certainly not been the case with the United States in their century of existence. Another way in which the war has united the country is in forcing out of sight, through military excitement, the growing strife between classes, forming, it is needless to say, merely the temporary suppression of a flame which will burst out again by and by with redoubled violence.

It may be said, 'You have exalted the institution of the presidency, a single executive head of the whole nation, with power of appointment through the whole administrative system. How has it worked in the present case? Mr. McKinley was elected for four years on financial and domestic questions with no discussion of that of war. He expressed at the outset the most humane and peaceful sentiments. There was to be no unjust or unholy war. All honorable means were to be exhausted for the preservation of peace. Yet from the first moment of the assembling of Congress in January, 1898, he has played into the hands of the so-called Jingo element. He allowed the chairman of the committee on Foreign Affairs to declare in the House, in substance and without contradiction, that the President was determined upon immediate war. When the question of peace or war was trembling in the balance he accepted the absolute control of fifty millions of dollars, and allowed it to be spent in headlong if not extravagant preparation for war. He refused of his own motion the proposal of

Spain for arbitration in the case of the *Maine*. He flung the bridle on the neck of Congress raging for war. He sent an army into Cuba in the beginning of the sickly season, when, but for the surprising collapse of Spanish resistance, it is evident that the majority would have perished from disease. He urged upon Congress the annexation of Hawaii, against the declared wishes of its inhabitants, and with very far from any evidence of approval by the people of the United States. When it came to negotiations for peace he appointed a commission, of which at least the majority were declared advocates of annexing all the Philippine Islands, if not the whole colonial possessions of Spain; those islands with which we had come in contact only by an accident of war and of which at the time of the peace protocol we held only one port and that imperfectly, so that their acquisition, even with the consent of Spain, might well imply the subjugation of their inhabitants by force. It is a region of which the possession would be certain to involve us in all the complications of the coming struggle for power between the nations of Europe in China and the Eastern seas. Events so natural as to be almost inevitable might make us full participants in the conflict certain sooner or later once more to desolate Europe, with the straining of all our resources in military and naval competition, such as can only be finally successful under a despotic ruler. Are these, it may be asked, 'the beneficial results of democracy under a single executive head?'

The answer is to be found in the whole book. Such a head of some kind democracy must and will have. The only question is whether it shall govern in the interest of the people or of faction and private interest in the legislature. Mr. McKinley may be called an accident of politics. There was nothing in his past career or known of his character and quality to mark him as a leader or governor of the people. He was simply put forward as a standard-

bearer of attractive exterior by party politicians and so far from being an executive head was only an instrument in the hands of the violent element in Congress. He has never put forward or urged or argued upon the general interest of the country. He has merely yielded to the impetuous rush of Congress backed by the newspapers.

Is not the difference apparent between such a man and statesmen trained and tested by years of debate and struggle over definite policies brought forward by a responsible government, watched and criticised and fought over by the leaders of great parties in full view of the whole country, so that when these parties came to nominate their candidates for the presidency, public opinion would dictate the choice so imperatively that failure to respond would insure the victory of the other side? With men thus selected very different results might be looked for. It is evident, however, that such conditions imply a direct conflict between public opinion and Congress as it now is. The fate of the country depends upon which side shall assert the final supremacy.

The necessity of party being assumed and the tendency of the Republican party being thus defined, what agency is available for opposition and to avert the establishment of arbitrary and despotic government by interposing one which is strong but not arbitrary? There is but one other party which is in any way available: the party which has been consistent in principle, if not from the beginning of the government, at least from early in the century; the party which has always stood for State rights and local self-government, and that is the Democratic. Reasons have been given¹ why the formation of a new party is almost impossible. The attempts made are always upon details which can at most command only groups or fractions. Yet the Democratic party offers far from promising material. When the Civil War combined all those who were

¹ See Chap. XXI.

opposed to slavery with those who were opposed to the breaking up of the Union, the remnant, which was ready to accept both for the sake of temporary peace, did not stand high either for intelligence or patriotism. The welding of the Republican forces by that war has lasted for a generation. Whenever there was wavering in the party from disgust with political managers it was only necessary to display the war banner and the ranks closed up at once. Discipline was enforced and the offices, whether appointive in the national government or elective in the States, were assigned for the advantage of party policy or the reward of party service. Anything like a spontaneous movement upon principle or individual initiative on public grounds became almost as impossible as it is in China.

The Democratic party, on the other hand, fell into complete disintegration. It had no policy, no leaders, and no discipline. Everywhere its efforts came to failure, of which the congressional period of 1892-1896 furnished the most conspicuous example. The exceptions were in New York and other great cities, and they were not such as to recommend the party to favor through the country. But behind both parties lay the same element of weakness, — the impossibility of government by a legislature, none the less fatal that neither of them showed any consciousness of the fact.

Suppose that happens which it is almost certain will happen, that a tidal wave of disgust, even stronger than that of 1890, overwhelms the Republicans in the year 1900; that disorder in the finances and the revolution in our constitutional principles implied in the new colonial policy should drive the party from power. They can be replaced only by the Democrats, who, with their past record, will be accepted by the country only because it is determined upon some change. As the Republicans, on their restoration to power in 1896, developed a policy on the same lines but infinitely worse than that for which they were expelled

in 1892, so the Democrats may be expected to develop a still higher degree of anarchy than that by which they showed themselves unable to replace the Republicans in 1892-1896. And as any policy is better than anarchy, the Republicans will again be intrusted with the government, with the bit between their teeth in their career of centralized and arbitrary power.

Many persons who are oppressed with the aspect of affairs console themselves by saying that when matters get very bad the American people will rise up and insist upon a change. But the wrath of the people can no more produce that change than the surf of the ocean dashing upon a rocky shore can mould its form. The people can replace one party in the government by another, but they cannot give to either party the spirit or the capacity for government. That must be the work of statesmen, whom, again, the people cannot create. They can only accept them when they appear, and the root of all our difficulty is that with our methods of procedure statesmen do not and cannot appear, and so this immense force of public opinion, like steam rising from an open kettle, goes to waste for want of suitably adjusted machinery for its application.

Even with this view of the condition of parties it is an important consideration that with the Democrats the ranks are open. The very absence of leaders leaves room for individual force and ability to make their way to the front. With the Republicans the line of applicants is full for every post and each is assigned for claims upon the party. With the Democrats there are no claims because there are no victories, and applicants do not swarm where defeat is chronic. The problem of the readjustment of legislative and executive power being the same in the Union and for the States, and since the vaster field of the former renders the solution of that problem on such a scale immensely more difficult, it follows that the individual States must

be looked to to set the example. The fact that there are forty-five of these actively competing for superiority — which can in no way be more effectively secured than by the establishment of a government productive of order, economy, and efficiency, in short, of all that makes government desirable — greatly increases the chance that the light will come from them.

The same difficulty, however, stands in the way. In nearly all the States where the intelligence and activity of the people give hope of the initiative of reform the Republican party leaders hold the political machinery with an iron grasp. A small number of men have complete control of the nominating conventions, and the offices are parcelled out, not with reference to the public interest, but to that of the party. Certainly the Democrats are no better. Our system of politics has imposed these shackles upon the popular will; and they are so firmly riveted that nobody ever thinks of revolt and a direct appeal to the people. Yet that is the one hope, that a strong man, knowing exactly what he wants and why he wants it, and stating the case fully to the voters, might overleap the caucus politicians and compel a nomination even within the party. It is the disorganized and tentative position of the Democratic party which offers the best opportunity for this.

Such a man must, however, possess a rare combination of qualities. He must see clearly from the start the goal at which he wishes to arrive, so as to be able to meet every objection and enforce every argument. He must be prepared to encounter every species of ridicule and abuse, not only with patience, but with equanimity and good nature. Inspired by enthusiasm for a great principle he must be absolutely free from self-seeking beyond an honorable ambition to serve his country, and to win a corresponding place in the esteem of his countrymen, present and future. He must possess a will which nothing can daunt, and

which fresh difficulties only stimulate to fresh exertion, with a fertility of resource which can turn obstacles into advantages. Above all, he must have a firm faith in the quality of the force upon which he relies, the mass of public opinion; not expecting from it great sagacity or penetration or foresight, any calm judgment in the adaptation of means to ends, any balancing of probabilities or considerations, nor any great comprehension of details, but only a general rectitude of purpose, a preference of right to wrong, a rich capacity for moral enthusiasm, and most of all a loyal and persistent adhesion to a personality in whom it has recognized an earnest and single-minded devotion to the public interest. And this faith must supply an effectual power of appeal to that public opinion, a spirit which shall go straight to the heart of the people, and shall arouse and put into operation that mighty force which alone is adequate to overcome the usurpation of all government by the legislature. It is certain to do that sooner or later, and the only question is whether it will be by constitutional methods for a constitutional result, or by an acquiescence in unconstitutional violence for a government in which constitutions will have very little share.

There are men in the United States of the kind here described. In parts we can see those qualities constantly displayed. If our political methods were half as well adapted to the development of personality as they are to the suppression of it we should astonish the world. Herein may be said to be the problem of our future history. It is a conflict of personality against irresponsible groups, of individuals against committees and commissions, of executive against legislature, of open responsibility for the public interest against private and nameless intrigue. It will be a battle in grim earnest, in which a failure of peaceful methods will involve a resort to the sword.

If our government can pass through this crisis success-

fully, can make peace upon honorable terms without burdening the nation with the addition of foreign populations; if the necessary strengthening of the executive can be accomplished with responsibility to public opinion, and the principles upon which our institutions were based a century ago can be transmitted without detriment, or with the requisite improvements, to future generations, then democracy will need no further defence in the world.

If, on the other hand, the war on which the United States have entered shall lead to the absorption not only of the Spanish West Indies but of the Philippine Islands and other Eastern countries; if the government of those alien populations shall tend fatally to the corruption of our own; if the difficulties of our internal government shall urge on Congress to fresh wars, for which such foreign possessions will furnish ample opportunities; if a military and naval caste shall impose upon the country the task of competing with all other nations for superiority in physical force; if the necessity of this shall not only require the nation to submit to military conscription but to the abolition of representative government and the extinction of the separate sovereignties of the States and thus to the enthronement of a supreme military ruler, — still we maintain that it cannot be charged that democracy is a failure. It will not have been shown that the equal participation of the whole population in periodically selecting their rulers is incompatible with the welfare of mankind. Without resorting to the *tu quoque* argument, that other forms of government have equally failed, we insist, as at the beginning, that with a wholly new force introduced into the world the proper machinery for its application has not yet been employed; that in its nature it is reasonable, sound, and on the whole beneficent; and that its perversion by private interests for their own purposes, certainly not a new process, may yet be to a great extent overcome by

improved organization. We are tempted to repeat the language already quoted from an English writer, that "the failures of government in the United States are not the result of democracy, but of the craftiest combination of schemes to defeat the will of democracy ever devised in the world."

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APPENDICES

APPENDIX A. CHAPTER XXIII., VOL. II., P. 44

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A NEW FORM OF GOVERNMENT

A DESPOTISM in a modern republic is surely a great novelty ; and yet we have had recently in several States something which closely resembles this. In defining the three chief forms of government, Montesquieu says : —

The republican is that in which the people in a body, or only a part of the people, exercise sovereign power ; the monarchic is that in which a single man governs, but according to fixed and established laws ; while in the despotic, one man, without law or rule, controls everything by his will and caprice.

It would be difficult to formulate a more accurate description of modern "Boss" government than this third definition supplies, as that government has been administered by Mr. Platt in New York, Mr. Quay in Pennsylvania, Mr. Gorman in Maryland, and Mr. Cox in Ohio. None of these has had any law or rule to control his conduct other than his own will and caprice. Each has obtained his power by securing control of the nominating machinery of his party, by methods which I shall examine fully later ; and each has used it to concentrate in himself the chief functions of the government of the State. Mr. Platt has done this to a greater extent than any other of our bosses, past or present, and has brought the new system to such a high state of perfection that his case is worthy of full and thoughtful consideration.

The foundation of the Platt despotism was laid in the winter of 1894, when the Republican party came into control of both

branches of the State legislature. He assumed direction of the legislature; and before the session closed it had become customary for the party leaders in the two houses to go to New York City at the end of each week to consult with him as to the conduct of public business. In the following winter, the governorship also came under Republican control; and then Mr. Platt openly assumed autocratic or despotic powers. He selected the officers for the two houses of the legislature, and dictated the arrangement of the committees. Every Saturday and Sunday the leaders of the two houses repaired to New York City, where with trusted local Republican politicians they met Mr. Platt in his business office, or hotel rooms, and decided upon the legislative proceedings for the following week. Appointments for office were also discussed and settled there. In scarcely an important instance did the legislature fail to obey the orders which reached it from Mr. Platt during this session. Some of his plans were thwarted by the refusal of the governor to give his consent to them; but these were usually cases of minor importance, and did not weaken Mr. Platt's power.

Much the same condition of things continued through the session of 1896. It was during this session that Mr. Platt took the first step in what has since become his most striking exhibition of despotic power. He had the legislature pass a bill creating a commission to draft a charter for the proposed city of Greater New York. Under the constitutional requirement this bill was submitted to the mayors of New York and Brooklyn for approval: it was disapproved by both. In withholding their approval, the mayors gave official voice to the public sentiment of their communities; for the provisions of the bill had excited strong opposition in all intelligent quarters in the two cities. Yet when the measure was returned to Albany, it was again passed by both houses, under orders from Mr. Platt. It was at this time that the phrase "jam it through" made its first appearance. The meaning of it was that the orders of the boss must be obeyed by his followers, in spite of all opposition or criticism. The bill, after its second passage, went to the governor; and he made it a law with his signa-

ture. It was a personal triumph for Mr. Platt: for public sentiment was strongly against the bill; and there was nothing of real weight in its support except his orders to "jam it through." Without those orders it would not have passed either house a second time. This was a notable act of absolute despotism. There were many others to follow.

The overshadowing importance of the presidential campaign was of incalculable value to Mr. Platt in the election of 1896. It enabled him to lay his plans free from scrutiny or even observation; and the national alarm which carried the State of New York for McKinley by 268,000 plurality swept Platt into power again more firmly than ever. It was not until it began to be said that he would be chosen to the United States Senate by the new legislature that people realized what had happened. Discussion soon revealed the fact that the Republican majority, comprising 150 of the 200 members in both houses, were as irrevocably pledged to him as if they had been his personal property. It mattered not in the least that there was no popular support whatever for his candidacy. It mattered not in the least that he had no qualifications for the place. These considerations did not enter into the question at all. The members of the legislature had promised him that they would do his will in all matters; and his will was that they should elect him to the United States Senate. His comment on his election was: "Well, I got there." And yet the intelligence and morality of his party, as well as of the people generally, were solidly arrayed against him; and a candidate of preëminent fitness was put forward by the Republicans in opposition to him. This candidate, after a vigorous campaign had been made in his behalf, received seven votes in the Republican caucus, and not a single vote in the election itself; the entire Republican majority voting for Mr. Platt.

The legislature which performed this act was, of course, organized as usual by Mr. Platt himself. He did the work even more openly than before; having the members meet him in New York City, and arranging all matters there. He held his weekly conferences as usual, and gave out their results without reservation to the newspapers; thus admitting that

the real work of government was carried on in his room rather than at Albany. This became strikingly apparent after Mr. Platt took his seat as United States senator on March 4. He left Washington at the close of each week, going to New York City for the express purpose of holding his Sunday conference or governmental council with his legislative and other agents. This conference had all the authority of a cabinet council; and at its close its decisions were given to the reporters as constituting the legislative programme for the ensuing week.

The most impressive demonstration of the despotic power behind these decisions was made in connection with the proposed charter for Greater New York. This had been drawn by the commission created by the Act of 1896. It had been prepared in secret, and only very inadequate opportunity had been given for public inspection of it before it was sent to the legislature; yet, in the brief time afforded, it had been condemned in very strong terms by what I may truthfully call the organized and individual intelligence of the community. The Bar Association, through a committee which contained several of the leading lawyers of the city, subjected it to expert legal examination, and declared it to be so full of defects and confusing provisions as to be "deplorable," and to give rise, if made law, "to mischiefs far outweighing any benefits which might reasonably be expected to flow from it." The Chamber of Commerce, the Board of Trade, the Clearing House Association, the City Club, the Union League Club, the Reform Club, the Real Estate Exchange, all the reputable ex-mayors, and other officials expressed equally strong condemnation, especially of certain leading provisions of the instrument; and the legislature was formally requested to give more time to the subject by postponing the date on which the charter should become operative. Not the slightest attention was paid at Albany to any of these requests. The Bar Association's objections were passed over in silence, as indeed were all the protests. The charter, excepting a few trifling changes, was passed without amendment by both houses of the legislature by an overwhelming vote. Only 6 of the 114 Republican members voted against it in the Assembly; and only 1 of the

36 Republican members in the Senate. There was no debate upon it in the Assembly. The men who voted for the charter said not a word in its favor, and not a word in explanation of their course in voting against all proposals to amend it. In the Senate the charter's chief advocates declared frankly their belief that it was a measure of "political suicide," since it was certain to put the proposed enlarged city into the hands of their opponents, the Democrats; yet they all voted for it because it had been made a party measure, that is, the despot had said it must pass. After its first passage it was sent, for public hearings and approval, to the mayors of the three cities affected by its provisions. The opposition developed at the hearings in New York City was very impressive — so much so that Mayor Strong, who as an *ex-officio* member of the charter commission had signed the report which had accompanied it when it went to the legislature, was moved by a "strong sense of public duty" to veto it because of "serious and fundamental defects." When the charter, with his veto message, arrived in Albany, the two houses passed it again by virtually the same vote as at first, and without either reading the mayor's message, or more than barely mentioning his name. One of the members who voted for it said privately: "If it were not for the fact that the 'old man' wants it, I doubt if the charter would get a dozen votes in the legislature outside the Brooklyn and Long-Island members."

I have gone into this charter episode somewhat in detail because it presents the most extreme illustration of the new form of government thus far afforded. A more complete defiance of the right of the people to a voice in the conduct of their public affairs could scarcely be made. A system of government which they had objected to because it flew directly in the face of all experience, — its leading provisions embodying methods of administration which had been tried and abandoned as pernicious, and which no great city in the world employs to-day, — was thrust upon them in contemptuous disregard of their wishes. No reason was given for this course except that Mr. Platt desired it. His "will and caprice" were supreme in the matter. The desires of three millions of peo-

ple, expressed through their most truly representative men and organizations, counted as nothing with the legislature.

Before passing to a consideration of the source of this despotic power, I wish to dwell for a moment upon a very striking feature of this new form of government. Its supreme acts are almost invariably performed in silence. Its motto in such cases is, "Vote and don't talk." When Mr. Platt was nominated in the Republican caucus for United States senator, not a word was said in his commendation by his advocates. He was simply put in nomination; and the votes were cast for him in silence. When he was elected by the two houses of the legislature, the same silence was maintained. I think this was entirely without precedent in such cases. There was the same silence when the New York charter passed the Assembly, and only a partial break in it when the Senate voted on the same measure. A like phase, which is also new, is seen in the treatment which is given to hostile criticism, either of men or measures. This is simply ignored. It is not even mentioned. Formerly, when a candidate for office was shown to have a damaging record, it was thought necessary to defend him. Under the new method of government, he is "jammed" into the place in silence. Formerly, when a legislative measure was attacked, and alleged defects in it were pointed out, its advocates met the objections in the best way they could. Under the new method, the measure is "jammed through" in silence. Popular will, public opinion in any form, are treated as of too little account to be even noticed. The will of the despot is supreme; and the people, in the language of the politician, are "not in it."

Upon what does this power rest? How does it come about that the legislature regards itself as the representative of Mr. Platt rather than of the people? There is no longer any mystery about this. The power rests upon money, raised as "campaign contributions" from both individuals and corporations, but mainly from corporations. The system by which this is made to give one man control of the government was originated by Richard Croker in 1893, when he was boss of Tammany Hall. Previous to his advent, campaign contributions were made to the

chairmen of political committees. They were given for no specific purpose except to gain the general good-will of the organizations. When the party boss appeared and began to dominate every one else in the party, the practice of paying the money to him followed naturally. At the same time the money became something more than a campaign contribution. The contributors, if they were corporations, had been in the habit of sending to Albany each year both special agents and money to be used in defeating hostile legislation or "strikes." Lawyers had to be retained to appear before committees and make arguments against such measures; and when this method of opposition failed to be effective, lobbyists had to be retained to employ other means. All this was very expensive. The boss, in control of both houses of the legislature, stepped in with the proposition that a lump sum be given to him each year, and that he, in consideration of this payment, should guarantee complete protection from hostile legislative action. Mr. Croker is believed to have laid the foundation of a very handsome fortune through this invention. In his time, all corporations ceased to send their attorneys to Albany, the business of individual lobbyists was nearly or quite ruined, and his discipline was so strict that no member of the majority in either house would venture even to introduce a bill which was hostile to the wishes of a contributing corporation. When the Republicans supplanted the Democrats in power, Mr. Platt adopted Mr. Croker's system as his own, and extended it over the entire State.

I will cite some of the most outspoken definitions of this system which have been made in the recent past, and which, though widely published, have never been contradicted. Mr. Wheeler H. Peckham, one of the ablest and most honored members of the New York bar, declared in a public speech, in March, 1894, that the payment of money to the boss by corporations, as the "price of peace," was general; naming one corporation which he said he knew paid \$50,000 yearly, and adding that he had knowledge of a second which paid a similar amount. Mr. Henry O. Havemeyer, president of the sugar trust, testified before the Senate Investigating Committee at

Washington, in June, 1894, that the trust made campaign contributions each year to New York political organizations, adding: "Every individual and corporation and firm—trust, or whatever you call it—does these things." Mr. E. C. Benedict, a director in many corporations, said, in a published interview, in December last:—

The government of this State is in the hands of three houses; and the third house does business on the principle of "stand and deliver." That's the way the legislature treats corporations. I am mentioning no names; but I will say that the present ruler is as much more expensive than the former one of a different political stripe, as an educated, high-priced man is than an ignorant and low-priced one.

Mr. W. D. Guthrie, a reputable and able member of the New York bar, said, in a speech in Carnegie Hall, New York, on December 23, 1896:—

Since the days of Tweed, a new system of political corruption has come into existence. The individual legislator is now seldom directly bribed. Corporations or individuals seeking protection or valuable charter rights at the hands of the legislature retain a recognized political boss, and pay him for the service to be rendered. This secures the desired favor. They pretend that these payments are contributions to the party; but as a matter of fact they are tributes to the fund of the boss, who turns over to the national, State, or county committee as much of the spoil as he sees fit, distributing most of it for the purpose of electing to the legislature his own nominees. In form it is a contribution to the party: in substance and truth it is bribery and blackmail. Most of these contributions are made by corporations. The items are entered on their books under fictitious sundry accounts and hidden from public investigation.

It is admitted by Mr. Platt's friends that he raises money in this way, and takes "contributions" in return for legislative protection and other favors to come; and the only excuse made for his conduct in so doing is that he uses the money for his party and not for his personal enrichment. Just how this, if true, makes his conduct any less reprehensible, I am unable to see. Why it should be accounted a virtue to refrain from self-corruption while corrupting the politics of an entire State, is something which passes my comprehension. But these are points upon which I do not wish to dwell now. It being con-

ceded that Mr. Platt collects contributions, let us see how he uses them to give him his power. On this point some recent testimony by his fellow-boss, Mr. Quay of Pennsylvania, is very illuminating. Mr. Quay, let me say parenthetically, is almost as despotic a boss as Mr. Platt, and is scarcely less open in his methods. He controls the legislature of his State in nearly all important political matters, and at times, though not regularly, goes from Washington to Harrisburg and openly directs its operations. He dictates all nominations, including those for United States senator; and his candidates are almost invariably successful. In December of last year he had a controversy with the Republican Business Men's League of Philadelphia in reference to the new senator from Pennsylvania; and in the course of it a letter was published which showed how it came about that Mr. Quay was master of the Republican majority in the legislature. The author of the letter was the chairman of the Republican State Committee; and it was a sample of a number which he had sent to many candidates for the legislature a few months earlier. It ran: "By request of Senator Quay I take great pleasure in enclosing contribution to defray your campaign expenses." Each letter contained a check for \$500 in the case of a senatorial candidate, and in the case of a candidate for the lower House one for \$250. That is the system in all its simplicity. The boss supplies candidates with the money necessary for them to get the nominations in the primaries and to pay their campaign expenses afterward; and he supplies it always with the understanding that he shall own the candidate after election. "I would like to vote for Mr. Choate for senator," said a New York legislator last winter, "but I am not quite sure but that something which was said when I went to see Platt last fall binds me to vote for him." There is always "something said"; and, in addition to this obligation to the boss, there is the absolute certainty that, if the boss be not obeyed in all things, there will be no campaign contribution next time and no reelection. The same power which has lifted the legislator into political life can drive him out of it whenever he ceases to give satisfaction.

The results of this control of the nominating machinery are wholly bad. From the nature of the case, it fills the public offices with unfit men, since no man of character will consent to enter public life under such conditions. In the great majority of instances the men selected by the boss for legislative candidates are persons who have either failed in life, or never tried to succeed. Either they have never followed a regular calling, or have tried one calling after another without success. Some of them are in debt, many of them would like to be, and all of them find themselves getting a living more easily than ever before. They feel deeply grateful to the man who has lifted them into this happy condition, and are naturally desirous of prolonging it. They know that their fitness for public office had nothing whatever to do with their selection; and they know that a demonstration of fitness would be fatal to their continuance in office. They, therefore, follow the orders of their political creator blindly and even joyfully, and in complete disregard of the people, who really had nothing to do with their promotion to office, and will have no deciding voice in their continuance in it. Their only guide to conduct is, "What does the old man want?" This is not a fictitious phrase, but one that is heard daily at Albany during a session of the legislature. Platt is universally spoken of among his followers as the "old man"; and the fate of every party measure is decided by the knowledge of what he wants done with it.

Of course the more absolute the boss's control of the legislature, the greater his capacity for collecting contributions from the corporations. The natural instinct of legislators who have never possessed any property is to get at people who possess a good deal and make them give up some of it. Left to themselves, a boss-nominated body of lawmakers would give themselves up mainly to "strike" legislation. The worse they are, the larger the basis upon which the boss can rest his demand for "contributions," because of the difficulty he will have in restraining so hungry and reckless a body. All this works together for good to the boss and his followers. The more he gets, the larger are their individual shares. If a

corporation be backward about giving, a bill threatening its business by cutting down its profits has only to appear in the legislature to bring it to terms. When it is considered that there are in the city of New York more than two thousand corporations, all subject to legislative interference, and with an aggregate capital of nearly two billions of dollars, it is easy to see how a boss can raise a campaign fund of sufficient size to pay the expenses of a very large number of candidates. He need not and does not stop with legislative candidates, but extends aid to all candidates for State offices and for Congress; demanding and obtaining from each the same understanding as to conduct in office that he obtains from legislative nominees. His control of the nominating machinery makes him absolute master of State conventions; and no man can become a nominee for governor or other State office except with his consent. Mr. Platt's power is more absolute than that of any other boss, because of the vastly greater invested wealth upon which he is able to make his levies. New York is the centre of the corporate wealth of the land; and, as a field for a despot of his type, it has no equal. Other bosses do the best they can with the resources at their command; for all of them have large cities within their domains, and all work by similar methods, laying the foundations of their power in the primaries and nominating conventions.

The bosses have, in fact, taken the control of the nominating machinery of politics away from the people. We had a striking illustration of this on a large scale in 1896. Mr. Hanna, in behalf of Mr. McKinley, went into the primaries of one State after another, and secured from them delegates to the National Republican Convention who, when chosen, were pledged to vote for Mr. McKinley as the nominee for the presidency. There was little concealment about this proceeding. As fast as delegates were obtained in this manner the result was announced in the press. Weeks in advance of the meeting of the Convention, Mr. Hanna's assistants published lists of delegates showing a majority of the Convention in favor of Mr. McKinley. This pre-convention campaign had been conducted on the presumption that the tariff was to be the leading issue of the forth-

coming presidential campaign; and Mr. McKinley's nomination was prearranged on that basis. By the time the Convention had assembled, the tariff had been completely overshadowed by the currency issue, which had assumed momentous importance; but, although Mr. McKinley's record upon this question was far from satisfactory, and a large proportion of his party desired the nomination of some man whose candidacy would give stronger assurance of currency reform after election, it was found impossible to break the ranks of his pledged delegates. His nomination had been settled in the primaries in much the same way as the State bosses secure their members of the legislature. Debts were incurred, which were paid off in various ways after Mr. McKinley became President. Appointments to office were made which were explicable only on this basis; and in many instances there was little attempt to conceal the nature of the transaction. But the greatest debt of all was paid in a new tariff bill which had no other excuse for existence. The country had been carried for McKinley through a national alarm about its honor and credit, which had brought to his support, on the common platform of sound money, men of all political beliefs. He was elected on the issue of sound money and currency reform, not on that of a high tariff. Yet, as soon as he entered upon his duties, he called Congress together in extra session, and sent to it a message which called for the enactment of a new tariff, and made no mention of currency reform. The tariff bill, which had already been prepared, was not a measure for raising revenue, but for increasing the burdens of taxation in the interest of protected manufacturers. Like the McKinley tariff of 1890, it had to be enacted to pay campaign debts, — in this instance, debts which had been incurred in depriving the people of their control of the nominating system.

It comes to the same thing in national and State applications of this new system of government; namely, that the people must pay the price of its operation. They pay in the misuse of their public offices, in the increased burdens which come from unwise and extravagant legislation, and from unjust and unnecessary taxation. They will pay later, also, in the conse-

quences which will flow from the exercise of the functions of government by men who obtain and maintain their power by means of money collected from great corporations. Not only have the people lost control of the nominating machinery, but they are no longer represented by their legislators. Most of these sit and act in the halls of legislation not as the servants of the people, but as the servants of the boss, who in turn serves the corporations. In what boss-controlled legislature of to-day can a hearing be secured for a grievance, no matter how just, against a corporation that has made a "contribution"? Could there be a more dangerous proceeding than this—a surer way in which to stimulate socialistic and populist hatred of corporations, trusts, and all forms of aggregated wealth? In making the boss a despot, by supplying him with the force upon which his power rests, are not his contributors sowing the wind for a whirlwind the devastating possibilities of which no man can foresee?

J. B. BISHOP.

[We will not here discuss the inadequacy of the remedies proposed by Mr. Bishop. What those remedies should be it is the main object of this work to point out.]

APPENDIX B. CHAPTER XXVI., Vol. II., p. 195

In the following tables has been used a book of a uniform standard in paging:¹—

	CONSTITUTION OF	PAGES
Pennsylvania	1776	8
	1790	8
	1838	10
	1873	23
Missouri	1820	12
	1865	21
	1875	33

¹ Poore's "Charters and Constitutions," quoted by Oberholzer, *op. cit.*, p. 43.

	CONSTITUTION OF	PAGES
Texas	1845	16
	1868	21
	1876	32
Virginia	1776	4
	1830	7
	1850	18
	1870	21
Illinois	1818	10
	1848	21
	1870	25

These are only a few of such comparisons which could be given, but are enough to indicate the tendency here referred to. The constitutions of all the new States are of great length, making pamphlets which cover from fifty to seventy-five pages. (The pages containing considerably less matter, however, than those taken as the standard in the tables above.)

The constitution of Mississippi framed in 1890 and that of Kentucky framed in 1891 are of about the same length, dealing with the subjects treated in like fullness and detail.

APPENDIX C. CHAPTER XXVI., P. 199

HOW THE REFERENDUM PRINCIPLE WORKS IN MARYLAND

TO THE EDITOR OF THE EVENING POST:—

SIR: Apropos of the *Evening Post's* comments on the vote in New Jersey this week on constitutional amendments, it occurs to me to mention the vote on constitutional amendments here in Maryland in November, 1891. An examination of that vote in detail results in a complete *reductio ad absurdum* of the referendum as a method of getting at the real wishes of the people as a whole. Of the six amendments voted upon, the two important ones were those to allow the taxation of mortgage debts, and to change a declaration of the bill of rights

about taxation of personal property, so as to be able to make our tax laws somewhat more rational. The first amendment, aiming at an impracticable end, ought to have been rejected, and the second ought to have been adopted, but the result was the adoption of the first and the rejection of the second. But apart from the smallness of the vote, most noticeable was the curious eccentricity of it, the absence of any settled or consistent purpose showing itself in anything like the same degree throughout the different parts of the State. The total vote for governor at that election was 192,000; the vote on the first amendment (carried by 4200 majority) was 66,500, and on the second amendment (defeated by 6000 majority) was 70,000. In different counties, generally not very different as to their interests, and sometimes very much alike, the most ludicrous differences were shown in the vote. In Frederick County 558 for and 2248 against the first amendment, and in Dorchester 4645 for, 6 against. In Dorchester that amendment brought out four-fifths of the vote cast; in Calvert, one-fourteenth. As to the second amendment, Washington County rejected it by a vote of 8 to 1, Charles wanted it by a vote of 5 to 1, and Dorchester, which was almost unanimous about the first amendment, was in favor of the second by only a small majority. In Caroline the question brought out nine-tenths of the vote cast; in Anne Arundel only one-sixteenth.

The true explanation of these ridiculous contrasts in the vote is doubtless this: that in some counties the leaders (bosses) on one side, Democratic or Republican, advised their followers to vote, say, for, and the leaders on the other side advised voting against, and the rank and file for the most part did as they were told. In other counties the leaders on both sides happened to be in favor of an amendment, or against it, and their followers voted accordingly. In still other counties, and in the city of Baltimore, the leaders did not know what to think about the question, and gave out no orders, and in those cases the great majority of voters of both parties saved themselves the trouble of thinking or even of voting on the question at all. An examination of the vote does not tend to increase one's estimate of the amount of intelligence which is to be

looked for in a popular vote on even the most important amendments to a constitution.

F. J. B.

BALTIMORE, September 30, 1897.

[The closeness of the vote on the anti-gambling amendment to the New Jersey constitution only emphasizes the weakness of such an election as a test of public sentiment. Examination of the returns leaves no room for doubt that, if all the men who voted for President last fall had gone to the polls last Tuesday, the gamblers and their sympathizers would have been beaten out of their boots; whereas, with only a third of last fall's voters turning out, this small but well-organized minority probably carried its point. A Baltimore correspondent supplies from the experience of Maryland the most illuminating exposition we have ever seen of the inconsistencies and absurdities of popular voting on constitutional questions. On a proposition to allow the taxation of mortgage debts, for example, one county went more than 4 to 1 against, and another, of apparently similar interests, 4645 for and only 6 against; in one county four-fifths of all the voters were recorded, in another only one-fourteenth. The only possible explanation of these and other equally remarkable anomalies seems to be that the local bosses in different parts of the State were generally followed by the voters, and that these bosses were divided in their opinion, while in some localities they took no interest in the question at all. The showing in Maryland demonstrates that the referendum must be a very untrustworthy guide as to public sentiment. — Ed.]

APPENDIX D. CHAPTER XXX., P. 326

CONSTITUTIONAL PROVISIONS OF VARIOUS COUNTRIES ON THIS SUBJECT

AUSTRIA

Fundamental law of December 21, 1867. — Article 28: The members of the ministry are authorized to take part in all the deliberations of the delegates in the Reichsrath, and to submit

their propositions personally or through the medium of a delegate. They have the right to be heard whenever they demand it. The delegates have the right to address questions to the ministry or to any one of its members, to call for answers and explanations, and to nominate committees of inquiry, to which the ministers must furnish the necessary information.

BELGIUM

Constitution of 1831. — Section II., article 88: The ministers have no deliberative voice in either chamber of the legislature except where they are members thereof. They have the right to be present in each of the chambers and to be heard whenever they demand it. The chambers may require the presence of the ministers.

BRAZIL

Constitution of 1824. — Chapter IV., article 53: The executive power, exercised through one of the ministers of state, has the right to propose laws; and it is only after an examination made by a committee of the Chamber of Deputies, in which the law is to originate, that such proposition can be converted into a bill.

Article 54: The ministers may discuss and defend the proposition after the report of the committee, but they cannot vote unless they are senators or deputies.

DENMARK

Fundamental law of 1865. — V., 59: The ministers, in virtue of their duties, have admission to the Rigsdag, and have the right during discussions to participate in the debate as often as they please, while observing the established rules. They have no vote except when they are members of the Rigsdag.

FRANCE

Constitutional law of July 18, 1875. — 6: The ministers have the right of being present in the two chambers, and may be heard whenever they demand. They may cause themselves to be assisted by commissioners designated by decree of the President of the Republic for the discussion of any bill proposed.

GERMANY (EMPIRE OF)

Constitution of 1871. — The Bundesrath is presided over by the chancellor of the empire, who has also the right to be present at the deliberations of the Reichstag or house of representatives, which is an elective body.

GREAT BRITAIN

While the executive government is vested nominally in the Crown, it is practically in a committee of ministers known as the Cabinet. All the acts of the ministry are liable to be questioned in Parliament; and as they may require prompt explanation, it is essential that the members of the Cabinet should have seats either in the upper or lower house, where they may constantly answer for the policy and action of the government.

GREECE

Constitution of 1864. — VII., 78: The ministers are admitted to the sessions of the chamber, and may be heard whenever they demand it. The ministers have no deliberative voice in the chamber, except when they are members of the same. The chamber may require the presence of the ministers.

ITALY

Constitution of 1848 (extended over the annexed provinces of the Kingdom of Italy). — 66: The ministers have no deliberative voice in either chamber, except when they are members thereof. But they have constantly the right of being present, and may be heard as often as they demand.

NETHERLANDS

Fundamental law of 1815 as amended in 1848. — Section IV., 89: Heads of the ministerial departments have the right of admission to the two chambers. They have only a deliberative share in legislation, unless they are members of either house. They communicate to the chambers, either verbally or in writing, the information demanded, whenever its communication is not judged contrary to the interest and safety of the kingdom, or of its possessions and colonies in the other parts of the

world. They may to that end be invited by each of the two chambers to be present at their sessions.

NORWAY

Fundamental law of 1814. — Section 76: Every law must be first proposed to the Odelsting (house of representatives) either by its own members or the government, and in the latter case through the medium of a counsellor of state.

PORTUGAL

Constitutional charter of 1826 as amended in 1852. — IV., 46: The executive power, exercised by one of the ministers of state, has the right of proposing bills, which belongs to it in the preparation of laws, and it is only after an examination in that chamber which must originate it that such a proposition can take the form of a bill.

47: The ministers may discuss and defend a proposition after the report of a committee, but they cannot vote unless they are peers or deputies.

PRUSSIA

Constitution of 1850. — IV., 60: The ministers, as well as the state functionaries who represent them, have admission to both chambers, and may be heard whenever they demand it. Each chamber may require the presence of the ministers.

SPAIN

Constitution of 1845, readopted in 1856. — IX., 64: The ministers may be senators or deputies, and may take part in discussions of the legislative assemblies; but they have no right to vote except in that chamber to which they belong.

SWEDEN

Constitutional law of 1809, as amended up to 1866. — II., § 53: The members of the council of state may assist at the sittings of each chamber, with the right of taking part in its deliberations, but not of voting, unless they are members of the chamber.

SWEDEN AND NORWAY

Act of union of 1815.— V.: The minister of state of Norway, and the two counsellors of state who accompany the king, shall have a seat and a deliberative voice in the Swedish council of state whenever affairs relative to the two kingdoms are in question. If affairs relative to the two kingdoms are brought before the king in the Norwegian council of state, at whatever time or place it may be assembled, three members of the Swedish council of state shall also have seats and right of deliberation thereon.

SWITZERLAND

Constitution of 1874.— Article 101: The members of the federal council have a consulting voice in the two sections of the Federal Assembly, as well as the right to introduce propositions upon subjects under deliberation.

CHILI

In the deliberations of the National Assembly it listens to the orators of the Senate and of the government, who must be one minister, one counsellor of state, and one secretary of state.

COLOMBIA

It is the duty of the ministers to communicate to both chambers, with the approbation of the executive power, all the information which may be demanded of them, orally or in writing, on the affairs of their respective departments, except in cases where publicity would be improper.

COSTA RICA

The secretaries of state may be present at the discussions in Congress or at either of the two houses, and they may take part in the same discussions, but they shall retire before the votes are cast.

GUATEMALA

In Guatemala they may fill both positions, and in fact they always go together; so that the secretaries of government fully share in the discussion and have both voice and vote.

NICARAGUA

In Nicaragua there is absolute incompatibility, and practically the secretaries leave the cabinet in order to go to Congress at the time of meeting, returning, often, to the secretaryship as soon as the Congress finally adjourns.

HONDURAS

In Honduras the secretaries cannot be members of Congress, but they may take part in discussions of all measures pending before them.

SALVADOR

The practice and the law are the same as in Honduras.

HAYTI

The secretary of state and the grand judge are the orators charged with representing the executive power, by oral communication, on the floor of the Senate and the Chamber of Representatives.

APPENDIX E. CHAPTER XXXII., P. 438

From *New York Nation*, September 8, 1896.

AN EXPERT ON THE MACHINE

THE most important element in the politics of the greatest States in the Union is the machine which controls their government. The most puzzling problem that confronts the voters, who are nominally "sovereigns" but really subjects, is how to recover the power which they have lost. The first step towards the solution of this problem is to understand what the machine really is, how it is constructed, and what are the sources of its strength. No evil was ever abolished until the people had clearly perceived its character and had thus learned how most effectively to attack it. A great deal has been spoken and written about the machine, but it has been done almost entirely by amateurs. Many students of government have sought to analyze this tremendous force which has been

developed in our politics, but they have been open to the charge of being "doctrinaires." What has been needed was a description by "a practical man" who "has been on the inside," and who "knows what he is talking about."

This long-felt want has now been met by John Wanamaker. He is no Mugwump; it was his boast a few months ago that he had never scratched a Republican ticket. He is no theorist or idealist; there is not a sharper business man in America. He is no ignorant outsider, making wild guesses; he understands the machine as well as he does either of his big stores. In a speech to the farmers at the Interstate Exposition held at Harrisburg last week, Mr. Wanamaker gave a description of the machine which, as the work of an able expert, deserves the attention of the nation. He announced that he "had taken great pains to accurately gather the facts," and no Quay man can impeach the substantial accuracy of his statements.

How, according to this unimpeachable authority, is the Republican machine built up? Its controller is Quay, who is United States senator, and who as such has two votes—his own and his subservient colleague, Penrose's—with the great prestige and patronage incident thereto. There is a Republican State committee, "which in every part is subjugated to serve the personal interests of Senator Quay first and the party next, without respect to the will of the people." There are thirty congressmen, with their secretaries, sixty persons, whose salaries aggregate \$180,000 annually, and who are responsible to the machine for their respective districts. There are 419 officers and employees of the State government, who receive in salaries \$1,034,500 annually, "who are selected only because they are supposed to be able to deliver the votes of their districts to any one the Quay machine dictates," and who are all assessed by the bosses. There is a State Senate, with expenses last year of \$169,604, whose "every officer, from president *pro tem.* down to page boys, is selected to do the machine's bidding"; and a House of Representatives, with 257 members, officers, and employees, drawing \$468,302 last year, with "all the committees selected by the machine, and chairmaned by men who know no will but that of Senator Quay," so that thus

"his machine absolutely controls all revenue and tax legislation." There are 4149 county offices, "a majority of which are controlled by Senator Quay's machine," whose salaries amount to \$5,000,000. There are, besides, the thousands of trustees and other officials and employees of hospitals, State and private, State prisons, reformatories, State asylums, charitable homes, State colleges, normal schools, soldiers' orphans' schools, scientific institutes, and museums, "who are expected to support the machine, or the appropriations of their institutions will be endangered."

For an alliance with these State officials, the federal government contributes the incumbents of 8122 post-offices with salaries amounting to \$3,705,446, "most postmasters being the personal agents of the machine in their respective towns." There are also the Philadelphia mint, with 438 employees, who receive in yearly salaries \$326,565; the office of the collector of the port, with 400 employees, who receive in salaries \$454,000; the internal revenue offices, with 281 employees, who receive in salaries \$356,400; the United States Circuit and District Courts, with 41 employees, who receive in salaries \$95,000; and the League Island navy-yard and State arsenals, with 585 employees, who receive in salaries \$725,000 — making a total of 14,705 officers and employees, who receive from the State and national governments \$7,609,911 annually.

"Money makes the mare go," and Mr. Wanamaker points out that, besides the amounts paid as salaries for State officers and legislators, the appropriation committee, "who are of Quay's personal selection," disburse \$10,000,000 annually to schools, hospitals, penal institutions, etc.; and "the bold manipulation of these funds for the benefit of the machine has educated people to regard moneys received for these purposes as personal contributions from Senator Quay, in return for which they must render help to his machine." The machine is also supported by the combined capital of the brewers of the State, their thousands of employees, and the dependent patrons whom they control, and it is alleged to have been the money of the brewers that paid the large sums, during Superintendent of Mint Boyer's administration as State treasurer, necessary

to make good shortages which saved the machine when his cashier became a fugitive from justice. Another ally of the machine is the State Liquor League, whose members are in every city, town, hamlet, and cross-roads throughout the State, and who maintain a permanent State organization, having headquarters and representatives at Harrisburg during the sessions of the legislature; they "are always for Senator Quay's machine, and form an important part of the machine's operations." A large number of the Common Pleas judges are charged with using their license-granting power for the benefit of the machine, by rewarding those faithful to the cause of Quay and punishing those opposed to the machine. Another potent force is the hundreds of subservient newspapers who are recipients of machine favors, with their army of newsgatherers and correspondents, "who are forced to chloroform public sentiment and hide the iniquities of the machine."

But "the principal allies and partners of the machine," according to Mr. Wanamaker, have not yet been mentioned: they are the corporations. "The 15,000 national and State office-holders and the thousands of other officials connected with State institutions," he says, "form a small part of the whole number of obedient machine men who are constantly at the command of Senator Quay, the admitted boss of the machine; the corporation employees of the State who are controlled for Quay's use increase the number to the proportions of a vast army." Going into detail, he finds that the steam railroads employ 85,117 men, and the great street railways, which "have received valuable legislative concessions for nothing," 12,079; "that monopoly of monopolies," the Standard Oil, 3000, "who are taught fidelity to Senator Quay;" the Bethlehem Iron Works, whose armor plates are sold to the government for nearly double the contract price offered to foreign countries, "influence their employees to such an extent that it has been found difficult to get men to stand as anti-Quay delegates"; the thousands of workmen of the Carnegie Iron Works "are marched to the polls under the supervision of superintendents and foremen, and voted for Quay candidates under penalty of losing their jobs"; while the great express

companies, which furnish franks to machine followers, "one of which is bossed by Senator Platt," with their thousands of men, can be counted on for great service to the machine; and the telegraph companies, whose State officials can be found at the inner Quay councils, with the thousands of employees distributed at every important point throughout the State, and before whom a large share of all important news must pass, constitute "one of the most dangerous parts of the Quay machine."

Such is the machine — the "franchise-granting, legislation-selling, monopoly-fostering, corporation-protecting, taxation-increasing, liberty-destroying, and manhood-crushing machine," as Mr. Wanamaker calls it — which governs Pennsylvania. It is the most extraordinary form of government ever developed on earth.

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